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Legal wrangling puts rights to diffusion tensor imaging in spotlight

By Greg Freiherr | November 5, 2010

A California neurosurgeon has launched what could turn into an epic legal battle over the rights to use diffusion tensor imaging, an MR technology that lately has begun to catch on as a diagnostic and neurosurgical planning tool.

Claiming that he holds the exclusive license to this technology, and that all users are violating that license, Dr. Aaron Filler has filed suit against the Regents of the University of California and Siemens Healthcare.

If successful, the two suits could set precedents, allowing Filler and his company, NeuroGrafix, to sue any university in any state in the union and any vendor whose products involve diffusion tensor imaging (DTI).

And Filler's argument is not just with vendors and universities. Anyone using diffusion tensor imaging or neurography is infringing the patent, Filler contends.

"They should arrange for a license or a lease arrangement," he said.

The rights associated with the patent, US patent 5,560,360, specifically address MR neurography. But Filler claims other techniques that visualize neural tracts in the brain or muscle fibers in the heart, particularly DTI, are covered.

Filler may be over-reaching, if claims made by Dr. Peter Basser are correct. Basser says he and two other scientists invented diffusion tensor imaging. Their **patent**, issued July 23, 1996, describes a method for "measuring the effective diffusion tensor for spin labeled particles and generating images therefrom." More than two years before the patent was issued, Basser and colleagues mentioned in the patent, James Mattiello and Denis LeBihan, wrote a paper entitled "MR Diffusion Tensor Spectroscopy and Imaging." Published in January 1994, the **article** describes "a new NMR imaging modality – MR diffusion tensor imaging."

"Neurography and DTI are really different inventions," said Basser, Ph.D., a senior investigator and director of the Program on Pediatric Imaging and Tissue Sciences at the National Institute of Child Health and Human

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Development. "As far as I can tell, neurography is just a technique that (Filler) and his colleagues developed to make nerves more visible. DTI involves a way of reporting information contained in the diffusion tensor, defining quantities and intrinsic properties of tissue that is very useful in making (neural) maps."

Setting aside the dispute over the DTI patent, there are questions about Filler's right to litigate his latest lawsuit. The University of California – as part of the state of California – is legally protected under sovereign immunity, which allows states to seize property, if its seizure is for the public benefit.

To battle the UC Regents, Filler has come up with a novel twist on a legal argument called "Inverse Condemnation." He contends that California has not employed due process nor has it provided fair compensation for the seizure of rights to the technology covered by the neurography patent. The outcome could have far flung repercussions.

The 50 states are immune from patent litigation, because they cannot be forced to appear in court to answer charges of infringement, according to Filler. But Inverse Condemnation should trump sovereign immunity, he said, clearing the way for litigation against any U.S. universities.

Filler has similar ambitions in regard to the radiology industry. If successful against Siemens, he expects other vendors will line up to pay for past and future use of DTI.

"Once a particular patent is proven, such as the MRI patent held by Dr. (Raymond) Damadian, once he battled it out with GE, he got **settlements** from the other entities," he said.

Filler's efforts are being fueled by a \$900,000 out-of-court settlement from his former research colleague Dr. Jay Tsuruda and Oak Tree Medical Center in Pasadena, CA, for infringement of the neurography patent. Ironically, Tsuruda is on the patent with Filler as co-inventor. According to Filler, however, the two men signed their rights over to the University of Washington in Seattle, which later licensed the patent exclusively to Filler's firm.

"I think that (the settlement) was very helpful, because it showed that this a viable patent," Filler said. "I think they thought at first that this patent would not be valid, but as they got into it further they realized that it was not a case that they could win."

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Oldest First

Newest First

by Aaron Filler | November 19, 2010 1:58 AM EST

There are many complex issues here, but Peter Basser's quote in this article suggesting that our patent

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Simon Sikorski, MD, September 10, 2012

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Martin Merritt, JD, September 9, 2012

If we do not start demanding real solutions from our

does not cover DTI is very misleading. To be clear, tensor based analysis and tractography were filed with the patent office by our group in 1992 before any public disclosure by Peter Basser or Dennis LeBihan. Our group showed the first tractographic image at the SMRM meeting in August of 1992 in Berlin. Michael Moseley re-presented our dramatic success in tractography at the diffusion plenary session of the Society for Magnetic Resonance Imaging in March of 1993 in San Francisco. Denis LeBihan was the moderator of the session. The Basser, LeBihan and Mattiello patent was filed after the presentation and does not mention our work. Basser and LeBihan did not disclose this information to the patent office. John Mazziotta - then Director of Brain Mapping at UCLA - presented our findings in the Wartenberg lecture to the American Academy of Neurology in 1997. No doubt, many present then - just as at the SMRI meeting in '93- may later have incorrectly believed that this was work from Basser and LeBihan who had not published their first tractography until 1998. Peter Basser appears to suggest in his comments in this article that we did not invent DTI at all and are confusing it with neurography. Elsewhere he suggests we may have mentioned it, but didn't understand what we were talking about. When Peter Basser was an undergraduate at Harvard, I was a graduate student teaching fellow there and I taught a course including material about my own work in the use of multi-dimensional and factor analytic methods for analyzing anatomical data such as brain features. In response to Basser's second patent application with Pierpaoli, the US PTO cited our patent numerous times in rejecting various claims from Basser and Pierpaoli's supposed further invention in 1999 - so any suggestion that they are unaware of our patent is demonstrably not viable. The full detail of the mathematics in ellipsoid analysis of tensor data obtained in multiple directions was published by members of David Pilbeam's project group in 1990 (see Tauxe et al J. Geophys Res 1990 95(B4):4391-4404.) This was the group in which I was working as a graduate student in the early 1980's. MRI manufacturers made the mistake of accepting the Basser and LeBihan patent. Readers of this article should not accept Basser's statement as a guarantee of safe passage on DTI. Interested readers are directed to the following two references for more detail: Filler AG. MR Neurography and Diffusion Tensor Imaging: Origins, history, & clinical impact of the first 50,000 cases with an assessment of efficacy and utility in a prospective 5,000 patient study group. Neurosurgery 65: (4 Suppl), pA29-A43 (2009). (DOI: 10.1227/01.NEU.0000351279.78110.00) (PMID: 19927075) Filler AG. The history, development and impact of computed imaging in neurological diagnosis and neurosurgery: CT, MRI, DTI. Internet Journal of Neurosurgery, 7:(1) (2010) http://www.ispub.com/journal/the_internet_journal_of_neurosurgery/volume_7_number_1_39/article/the-history-development-and-impact-of-computed-imaging-in-neurological-diagnosis-and-neurosurgery-ct-mri-and-dti.html Aaron Filler, MD, PhD, FRCS

by Vasileios Papakostas | November 10, 2010 3:26 AM EST

If pattends are so expensive, then I must be rich

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by Stewart Hawkins | November 09, 2010 10:33 PM EST

Boston Legal, California style. Let's hope the lawyers are just as hot....

by johan dehem | November 09, 2010 3:12 PM EST

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Exhibit L

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA (Western
Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10-cv-01990-MRP -RZ**

NeuroGrafix et al v. Siemens Medical Solutions USA, Inc. et al
Assigned to: Judge Mariana R. Pfaelzer
Referred to: Magistrate Judge Ralph Zarefsky
Related Cases: [2:11-cv-07591-MRP-RZ](#)
[2:12-cv-04586-MRP-RZ](#)
Cause: 35:145 Patent Infringement

Date Filed: 03/18/2010
Date Terminated: 11/22/2011
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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a California corporation

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Brett Alan Lovejoy

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Noel Rodriguez

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Date Filed	#	Docket Text
03/18/2010	<u>1</u>	COMPLAINT against Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc. Case assigned to Judge Otis D Wright, II for all further proceedings. Discovery referred to Magistrate Judge Ralph Zarefsky.(Filing fee \$ 350: PAID) Jury Demanded., filed by plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc., Center for Advanced Spinal Neurosurgery Medical Group Inc., Aaron G. Filler, M.D., Ph.D. A

03/18/2010		21 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc. (ghap) (Entered: 03/19/2010)
03/18/2010	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc., identifying Other Affiliate Washington Research Foundation, Other Affiliate Providence Investment Company Limited for NeuroGrafix. (ghap) (ds). (Entered: 03/19/2010)
03/18/2010	3	CORPORATE DISCLOSURE STATEMENT filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. (ghap) (ds). (Entered: 03/19/2010)
03/18/2010	4	REPORT ON THE FILING OF AN ACTION Regarding a Patent (Initial Notification) filed by Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc.(ghap) (Entered: 03/19/2010)
03/23/2010	5	PROOF OF SERVICE Executed by Plaintiff Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc., Center for Advanced Spinal Neurosurgery Medical Group Inc., Aaron G. Filler, M.D., Ph.D. A Professional Corporation, upon Defendant Siemens Medical Solutions USA, Inc. served on 3/19/2010, answer due 4/9/2010. Service of the Summons and Complaint were executed upon Margaret Wilson, Process Specialist, CT Corporation System, Registered Agent in compliance with Federal Rules of Civil Procedure by service on a domestic corporation, unincorporated association, or public entity. Original Summons NOT returned. (Rodriguez, Noel) (Entered: 03/23/2010)
03/24/2010	6	STANDING ORDER REGARDING NEWLY ASSIGNED CASES by Judge Otis D Wright II. Read This Order Carefully. It Controls This Case and Differs in Some Respects From the Local Rules. (See Order for Details). (sch) (Entered: 03/24/2010)
04/01/2010	7	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 (Related Case) filed. Transfer of case declined by Judge Christina A. Snyder, for the reasons set forth on this order. Related Case No. CV 08-02923 CAS (JTLx) (rn) (Entered: 04/01/2010)
04/02/2010	8	ORDER TRANSFERRING CIVIL ACTION pursuant to Section 3.1 of General Order 08-05. ORDER case transferred from Judge Otis D Wright, II to the calendar of Judge Mariana R. Pfaelzer for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 10-01990 MRP(RZx). Signed by Judge Otis D Wright, II and Judge Mariana R. Pfaelzer. (rn) (Entered: 04/02/2010)
04/09/2010	9	FIRST STIPULATION Extending Time to Answer the complaint as to Siemens Medical Solutions USA, Inc. answer now due 4/30/2010, filed by Defendant Siemens Medical Solutions USA, Inc.. (Dauchot, Luke) (Entered: 04/09/2010)
04/28/2010	10	APPLICATION for attorney Gregg F. LoCascio, P.C. to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by Defendant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing, # 2 Proposed Order G-64 Proposed Order)(Dauchot, Luke) (Entered: 04/28/2010)
04/28/2010	11	APPLICATION for attorney Christopher Nalevanko to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by Defendant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing, # 2 Proposed Order G-64 Proposed Order)(Dauchot, Luke) (Entered: 04/28/2010)
04/28/2010	12	APPLICATION for attorney Brian N. Gross to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by Defendant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing, # 2 Proposed Order G-64 Proposed Order)(Dauchot, Luke) (Entered: 04/28/2010)

04/28/2010	<u>13</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Siemens Medical Solutions USA, Inc. answer now due 5/7/2010, filed by Defendant Siemens Medical Solutions USA, Inc.. (Dauchot, Luke) (Entered: 04/28/2010)
04/29/2010	<u>14</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>10</u> Application to Appear Pro Hac Vice by Attorney Gregg F. LoCascio, PC on behalf of Defendant Siemens Medical Solutions USA, Inc., designating Luke L. Dauchot as local counsel. (Fee Paid 4/28/10) (lom) (Entered: 04/30/2010)
04/29/2010	<u>15</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>11</u> Application to Appear Pro Hac Vice by Attorney Christopher Nalevanko on behalf of Defendant Siemens Medical Solutions USA, Inc., designating Luke L. Dauchot as local counsel. (Fee Paid 4/28/10) (lom) (Entered: 04/30/2010)
04/29/2010	<u>16</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>12</u> Application to Appear Pro Hac Vice by Attorney Brian N. Gross on behalf of Defendant Siemens Medical Solutions USA, Inc., designating Luke L Dauchot as local counsel. (Fee Paid 4/28/10) (lom) (Entered: 04/30/2010)
05/06/2010	<u>17</u>	NOTICE of Appearance filed by attorney Sean M McEldowney on behalf of Defendant Siemens Medical Solutions USA, Inc. (McEldowney, Sean) (Entered: 05/06/2010)
05/07/2010	<u>18</u>	NOTICE of Manual Filing filed by Defendant Siemens Medical Solutions USA, Inc. of (1) Memo. ISO Motion to Dismiss; (2) Declaration of Sean McEldowney; (3) Application to File Under Seal. (McEldowney, Sean) (Entered: 05/07/2010)
05/07/2010	<u>19</u>	<i>Certification and Notice</i> of Interested Parties filed by Defendant Siemens Medical Solutions USA, Inc., identifying Siemens Corporation and Siemens AG. (McEldowney, Sean) (Entered: 05/07/2010)
05/07/2010	<u>20</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction <i>Pursuant to Rule 12(b)(1)</i> (Motion set for hearing on 6/7/2010 at 11:00 AM before Judge Mariana R. Pfaelzer.), MOTION to Dismiss Case (<i>Indirect Infringement Claims</i>) <i>Pursuant to Rule 12(b)(6)</i> filed by Defendant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 05/07/2010)
05/07/2010	<u>21</u>	NOTICE OF LODGING filed <i>Proposed Order</i> re MOTION to Dismiss for Lack of Jurisdiction <i>Pursuant to Rule 12(b)(1)</i> MOTION to Dismiss Case (<i>Indirect Infringement Claims</i>) <i>Pursuant to Rule 12(b)(6)</i> MOTION to Dismiss for Lack of Jurisdiction <i>Pursuant to Rule 12(b)(1)</i> MOTION to Dismiss Case (<i>Indirect Infringement Claims</i>) <i>Pursuant to Rule 12(b)(6)</i> <u>20</u> (Attachments: # <u>1</u> Proposed Order Granting Motion to Dismiss)(McEldowney, Sean) (Entered: 05/07/2010)
05/07/2010	<u>22</u>	APPLICATION to File Under Seal filed by Defendant Siemens Medical Solutions USA, Inc. Lodged Proposed Order. (gk) (Entered: 05/10/2010)
05/11/2010	<u>23</u>	SEALED DOCUMENT- Memorandum in Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6). (mat) (Entered: 05/14/2010)
05/11/2010	<u>24</u>	SEALED DOCUMENT- Declaration of Sean M. Mceldowney in Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6). (Attachments:Part 2, Part 3)(mat) (Entered: 05/14/2010)
05/11/2010	<u>26</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>22</u> Defendant Siemens Medical Solutions USA, Inc.'s Application to file under Seal. The Court hereby ORDERS that: 1. Defendant Siemens Medical Solutions USA, Inc.'s Application for Leave to File Under Seal Its Memorandum in Support of Its Motion to Dismiss and Declaration of Sean M. McEldowney in Support of its motion to dismiss is granted <u>22</u> ; 2. The Memorandum in Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(l) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6) shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1; and 3. The Declaration of Sean M. McEldowney in Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(l) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6), and exhibits thereto, shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1. (lom) Modified on 5/17/2010 (lom). (Entered: 05/17/2010)

05/14/2010	<u>25</u>	STIPULATION to Continue Motion to Dismiss from June 7, 2010 to June 21, 2010 Re: MOTION to Dismiss for Lack of Jurisdiction Pursuant to Rule 12(b)(1) MOTION to Dismiss Case (Indirect Infringement Claims) Pursuant to Rule 12(b)(6) MOTION to Dismiss for Lack of Jurisdiction Pursuant to Rule 12(b)(1) MOTION to Dismiss Case (Indirect Infringement Claims) Pursuant to Rule 12(b)(6) <u>20</u> filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc.. (Attachments: # <u>1</u> Proposed Order) (Beeman, Arthur) (Entered: 05/14/2010)
05/19/2010	<u>27</u>	ORDER Granting Stipulation Revising Briefing Schedule and Continuing hearing <u>25</u> by Judge Mariana R. Pfaelzer. The Court hereby revises the briefing schedule and continues the hearing on the motion to dismiss <u>20</u> filed by Defendant on May 7, 2010 as follows: Plaintiffs' opposition brief due: May 24, 2010; Defendant's reply brief due: June 7, 2010; and Hearing date: June 21, 2010. (lom) (Entered: 05/20/2010)
05/24/2010	<u>28</u>	NOTICE of Manual Filing filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. of Application to File Under Seal and Opposition to Motion to Dismiss. (Beeman, Arthur) (Entered: 05/24/2010)
05/24/2010	<u>29</u>	NOTICE OF LODGING filed re Notice of Manual Filing (G-92), Notice of Manual Filing (G-92) <u>28</u> , MOTION to Dismiss for Lack of Jurisdiction Pursuant to Rule 12(b)(1) MOTION to Dismiss Case (Indirect Infringement Claims) Pursuant to Rule 12(b)(6) MOTION to Dismiss for Lack of Jurisdiction Pursuant to Rule 12(b)(1) MOTION to Dismiss Case (Indirect Infringement Claims) Pursuant to Rule 12(b)(6) <u>20</u> (Attachments: # <u>1</u> Proposed Order Denying Siemens Medical Solutions USA, Inc.'s Motion to Dismiss)(Beeman, Arthur) (Entered: 05/24/2010)
05/24/2010	<u>30</u>	CERTIFICATE OF SERVICE filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc., served on May 24, 2010. (Beeman, Arthur) (Entered: 05/24/2010)
05/24/2010	<u>31</u>	APPLICATION to File Plaintiff's Memorandum in Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. Lodged [Prop] Order. (lom) (Entered: 05/25/2010)
05/25/2010	<u>32</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>31</u> Plaintiffs' Application for leave to file Memorandum in Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss under seal. The Memorandum in Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1. (lom) (Entered: 05/26/2010)
05/25/2010	<u>33</u>	SEALED DOCUMENT- Plaintiffs' Memorandum in Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss. (mat) (Entered: 05/26/2010)
06/02/2010	<u>34</u>	NOTICE of Decision: Recent Federal Circuit Authority filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc.. (Beeman, Arthur) (Entered: 06/02/2010)
06/07/2010	<u>35</u>	NOTICE of Manual Filing filed by Defendant Siemens Medical Solutions USA, Inc. of Reply in Support of Motion to Dismiss, Declaration of Sean M. McEldowney and Exhibits Thereto, and Application and Proposed Order to File Under Seal. (McEldowney, Sean) (Entered: 06/07/2010)
06/07/2010	<u>36</u>	APPLICATION to File Under Seal: 1. Reply Memorandum in Further Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6); and 2. Declaration of Sean M. McEldowney in Further Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, in the Alternative,

06/08/2010	37	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. The Court ORDERS Plaintiffs to submit a surreply brief of no more than three (3) pages on the issue of whether NeuroGrafix's field-of-use sublicensees hold overlapping rights under U.S. Patent No. 5,560,360. The surreply brief is due no later than Monday, June 14, 2010. (lom) (Entered: 06/09/2010)
06/09/2010	38	ORDER by Judge Mariana R. Pfaelzer: 1. Defendant Siemens Medical Solutions USA, Inc.'s Application for Leave to File Under Seal Its Reply Memorandum in Further Support of Its Motion to Dismiss and Declaration of Sean M. McEldowney in Further Support of its motion to dismiss is granted; 2. The Reply Memorandum in Further Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing Of, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6) shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1; and 3. The Declaration of Sean M. McEldowney in Further Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, in the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b)(6), and exhibits thereto, shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1. (lom) (Entered: 06/11/2010)
06/09/2010	39	SEALED DOCUMENT - REPLY IN FURTHER SUPPORT OF DEFENDANT SIEMENS MEDICAL SOLUTIONS USA, INC.'S MOTION to Dismiss Under Rule 12(b)(1) for Lack of Standing or in the Alternative, to Dismiss Infringement Claims Under Rule 12(b)(6)(lra) (Entered: 06/11/2010)
06/09/2010	40	SEALED DOCUMENT- Declaration of Sean M. Mceldowney in Further Support of Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss Suit Under Rule 12(b)(1) for Lack of Standing or, In the Alternative, to Dismiss Indirect Infringement Claims Under Rule 12(b) (6). (Attachments: Part 2)(mat) (Entered: 06/14/2010)
06/14/2010	41	NOTICE of Manual Filing filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. of (1) Sur-Reply in Support of Plaintiffs' Opposition to Defendant Siemens' Medical Solutions USA, Inc.'s Motion to Dismiss; (2) Application to File Under Seal and Proposed Order. (Beeman, Arthur) (Entered: 06/14/2010)
06/14/2010	42	APPLICATION for Leave to file under seal the Sur-reply in support of Plaintiffs' Opposition to Defendant Siemens Medical Solutions USA, Inc's Motion to Dismiss filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. Lodged [Prop] Order. (lom) (Entered: 06/16/2010)
06/15/2010	43	ORDER by Judge Mariana R. Pfaelzer: granting 42 Application for Leave to file the sur-reply in support of Plaintiffs' Opposition to Defendant Siemens Medical Solutions USA, Inc's Motion to Dismiss for Leave. The Sur-reply in Support of Plaintiffs' Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1. (lom) (Entered: 06/16/2010)
06/15/2010	44	SEALED DOCUMENT- Sur-Reply in Support of Plaintiffs' Opposition to Defendant Siemens Medical Solutions USA, Inc.'s Motion to Dismiss.(mat) (Entered: 06/16/2010)
06/16/2010	45	MINUTES (IN CHAMBERS) by Judge Mariana R. Pfaelzer. The Court on its own motion continues the hearing on defendants' motion to dismiss 20 , set for Monday, June 21, 2010 at 11:00 a.m. to Wednesday, June 23, 2010 at 11:00 a.m. (lom) (Entered: 06/17/2010)
06/23/2010	46	MINUTES OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO FRCP 12(B)(6) FOR LACK OF STANDING, OR IN THE ALTERNATIVE, TO DISMISS INDIRECT INFRINGEMENT CLAIMS UNDER RULE 12 (b)(6) (fld 5/76/10) Held and Completed before Judge Mariana R. Pfaelzer. The Court takes the motion 20 under submission and its order will follow. Court Reporter: Cindy Nirenberg. (lom) (Entered: 06/24/2010)

06/30/2010	<u>47</u>	ORDER REGARDING MOTION TO DISMISS <u>21</u> by Judge Mariana R. Pfaelzer. The Court GRANTS Defendants' motion to dismiss with respect to Plaintiff Neurografix WITH LEAVE TO AMEND. For the reasons set forth above, the Court GRANTS Defendants' motion to dismiss with respect to Plaintiffs IBSC, INM, CASN, and NIMA WITH PREJUDICE. Neurografix may file an amended complaint no later than thirty (30) days from the date of this Order. (lom) (Entered: 07/01/2010)
07/13/2010	<u>48</u>	ORDER by Judge Mariana R. Pfaelzer, granting defendants' MOTION to Dismiss <u>20</u> with respect to Plaintiff Neurografix WITH LEAVE TO AMEND. For the reasons set forth above, the Court GRANTS Defendants motion to dismiss with respect to Plaintiffs IBSC, INM, CASN, and NIMA WITH PREJUDICE. Neurografix may file an amended complaint no later than thirty (30) days from the date of this Order. (lom) (Entered: 07/14/2010)
07/19/2010	<u>57</u>	MINUTES (IN CHAMBERS) by Judge Mariana R. Pfaelzer. The Court's Order regarding Defendants' Motion to Dismiss dated June 30, 2010 <u>47</u> was mistakenly reissued on July 13, 2010 <u>48</u> . The Court ORDERS the parties to ignore the reissued Order dated July 13, 2010. It remains the Order of the Court that Neurografix has no more than thirty (30) days from the date of the June 30, 2010 Order to file an amended complaint. (lom) (Entered: 08/05/2010)
07/29/2010	<u>49</u>	TRANSCRIPT for proceedings held on n. Court Reporter: Cindy Nirenberg, www.cindynirenberg.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through the court reporter or PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 8/19/2010. Redacted Transcript Deadline set for 8/29/2010. Release of Transcript Restriction set for 10/27/2010. (Nirenberg, Cindy) (Entered: 07/29/2010)
07/29/2010	50	NOTICE OF CLERICAL ERROR: Due to clerical error Re: Transcript (CV), Transcript (CV), Transcript (CV) <u>49</u> (Nirenberg, Cindy) (Entered: 07/29/2010)
07/29/2010	<u>51</u>	NOTICE OF CLERICAL ERROR: Due to clerical error (Nirenberg, Cindy) (Entered: 07/29/2010)
07/29/2010	<u>52</u>	NOTICE OF FILING TRANSCRIPT filed for proceedings 6/23/10 11:00 am (Nirenberg, Cindy) (Entered: 07/29/2010)
07/30/2010	<u>53</u>	NOTICE OF MOTION AND MOTION for Reconsideration re Order, <u>48</u> , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, <u>47</u> filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc.. Motion set for hearing on 8/30/2010 at 11:00 AM before Judge Mariana R. Pfaelzer. (Beeman, Arthur) (Entered: 07/30/2010)
07/30/2010	<u>54</u>	MEMORANDUM in Support of MOTION for Reconsideration re Order, <u>48</u> , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, <u>47</u> MOTION for Reconsideration re Order, <u>48</u> , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, <u>47</u> <u>53</u> filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc.. (Beeman, Arthur) (Entered: 07/30/2010)
07/30/2010	<u>55</u>	NOTICE OF LODGING filed of <i>[Proposed]</i> Order re Memorandum in Support of Motion,, <u>54</u> , MOTION for Reconsideration re Order, <u>48</u> , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, <u>47</u> MOTION for Reconsideration re Order, <u>48</u> , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, <u>47</u> <u>53</u> (Attachments: # <u>1</u> Proposed Order Granting Plaintiffs' Motion for Reconsideration or Orders Dismissing Plaintiffs IBSC and NIMA)(Beeman, Arthur) (Entered: 07/30/2010)
07/30/2010	<u>56</u>	AMENDED DOCUMENT filed by Plaintiff NeuroGrafix. Amendment to Summons Issued <i>First Amended Complaint</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Beeman, Arthur) (Entered: 07/30/2010)
08/06/2010	<u>58</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Amended

Document (Non-Motion) [56](#) . The following error(s) was found: L.R. 3-2 Filing of Initiating Documents. Complaints and other initiating documents in civil cases shall be filed in the traditional manner on paper rather than electronically. Please manually filed First Amended Complaint. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (lom) (Entered: 08/06/2010)

08/09/2010	59	NOTICE of Manual Filing filed by Plaintiff NeuroGrafix of 1. First Amended Complaint; 2. Corporate Disclosure Statement of Washington Research Foundation; 3. Certificate of Interested Parties of Washington Research Foundation. (Beeman, Arthur) (Entered: 08/09/2010)
08/09/2010	60	MEMORANDUM in Opposition to MOTION for Reconsideration re Order, 48 , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, 47 MOTION for Reconsideration re Order, 48 , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, 47 53 filed by Defendant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 08/09/2010)
08/09/2010	61	FIRST AMENDED COMPLAINT against Defendants Siemens Medical Solutions USA, Inc. and Siemens Aktiengesellschaft; Party Image-Based Surgicenter Corporation, Neurography Institute Medical Associates, Inc., Aaron G. Filler, M.D., Ph.D. A Professional Corporation and Center for Advanced Spinal Neurosurgery Medical Group Inc. terminated; amending Complaint 1 ; with Jury Demand filed by Plaintiffs NeuroGrafix and Washington Research Foundation. (gk) (shb). (Entered: 08/10/2010)
08/09/2010		21-Day Summons Issued re First Amended Complaint 61 as to Defendants Siemens Medical Solutions USA, Inc. and Siemens Aktiengesellschaft. (gk) (Entered: 08/10/2010)
08/09/2010	62	CORPORATE DISCLOSURE filed by Plaintiff Washington Research Foundation (shb) (Entered: 08/10/2010)
08/09/2010	63	CERTIFICATION and NOTICE of Interested Parties filed by Plaintiff Washington Research Foundation, (shb) (Entered: 08/10/2010)
08/09/2010	64	CORPORATE DISCLOSURE STATEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 7.1 re University of Washington filed by Plaintiff Washington Research Foundation (shb) (Entered: 08/11/2010)
08/09/2010	65	CERTIFICATION and NOTICE of Interested Parties filed by Plaintiff Washington Research Foundation, identifying Other Affiliate University of Washington for Washington Research Foundation. (shb) (Entered: 08/11/2010)
08/13/2010	66	PROOF OF SERVICE Executed by Plaintiff Washington Research Foundation, NeuroGrafix, upon Defendant Siemens Medical Solutions USA, Inc. served on 8/11/2010, answer due 9/1/2010. Service of the Summons and Complaint were executed upon Maria Sanchez, Process Specialist, CT Corporation, Registered Agent in compliance with Federal Rules of Civil Procedure by service on a domestic corporation, unincorporated association, or public entity. Original Summons NOT returned. (Beeman, Arthur) (Entered: 08/13/2010)
08/16/2010	67	NOTICE of Manual Filing filed by Plaintiffs Aaron G. Filler, M.D., Ph.D. A Professional Corporation, Center for Advanced Spinal Neurosurgery Medical Group Inc., Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates, Inc. of Application to File Under Seal; Declaration of Arthur S. Beeman in Support of Plaintiffs' Motion for Reconsideration of Orders Dismissing Plaintiffs IBSC and NIMA; and [Proposed] Order Granting Application to File Under Seal Declaration of Arthur S. Beeman in Support of Plaintiffs Motion for Reconsideration of Order Dismissing IBSC and NIMA. (Beeman, Arthur) (Entered: 08/16/2010)
08/16/2010	68	MEMORANDUM in Support of MOTION for Reconsideration re Order, 48 , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, 47 MOTION for Reconsideration re Order, 48 , Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss Case,, 47 53 <i>Reply Memorandum in Support of Motion for Reconsideration of Orders Dismissing Plaintiffs</i>

08/16/2010	69	APPLICATION for attorney David T. McDonald to Appear Pro Hac Vice (PHV Fee of \$275 receipt number 0973-7386509 paid.) filed by Plaintiff Washington Research Foundation. (Attachments: # 1 Exhibit Attachment 1, # 2 Exhibit Certificate of Good Standing, # 3 Proposed Order)(Gunning, Bradley) (Entered: 08/16/2010)
08/16/2010	70	APPLICATION to file under seal: Declaration of Arthur S. Beeman in Support of Plaintiffs' Motion for Reconsideration of Orders Dismissing Plaintiffs IBSC and NIMA filed by Plaintiffs NeuroGrafix, et al. Lodged [Prop] Order. (lom) (Entered: 08/18/2010)
08/18/2010	71	ORDER by Judge Mariana R. Pfaelzer: granting 69 Application to Appear Pro Hac Vice by Attorney David T. McDonald on behalf of Plaintiff Washington Research Foundation, designating Paul W. Sweeney as local counsel. (Fee Paid 8/16/10) (lom) (Entered: 08/19/2010)
08/19/2010	73	SEALED DOCUMENT- Declaration of Arthur S. Beeman in Support of Plaintiffs' Motion for Reconsideration of Orders Dismissing Plaintiffs IBSC and NIMA. (mat) (Entered: 08/25/2010)
08/19/2010	74	ORDER by Judge Mariana R. Pfaelzer: granting 70 Plaintiffs' Application to file under seal the Declaration of Arthur S. Beeman in Support of Plaintiff's, Motion for Reconsideration of Order Dismissing Plaintiffs IBSC and NIMA is granted. The Declaration of Arthur S. Beeman in Support of Plaintiffs' Motion for Reconsideration of Order Dismissing Plaintiffs IBSC and NIMA shall be deemed filed under seal, pursuant to Central District Local Rule 79-5.1. (lom) (Entered: 08/26/2010)
08/20/2010	72	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. the Court DENIES Plaintiffs' Motion for Reconsideration 53 of Orders Dismissing Plaintiffs IBSC and NIMA. The hearing scheduled for the Motion for Reconsideration is VACATED. (Refer to attached document for details.) (lom) (Entered: 08/23/2010)
09/01/2010	75	NOTICE of Manual Filing filed by Defendant Siemens Medical Solutions USA, Inc. of Siemens Medical Solutions USA, Inc.'s Answer, Affirmative Defenses, and Counterclaims. (McEldowney, Sean) (Entered: 09/01/2010)
09/01/2010	77	ANSWER to First Amended Complaint, 61 AND COUNTERCLAIMS; Jury Trial Demanded against NeuroGrafix, Washington Research Foundation filed by Defendant Siemens Medical Solutions USA, Inc. (lom) (lom). (Additional attachment(s) added on 9/3/2010: # 1 Summons) (lom). (Entered: 09/02/2010)
09/02/2010	76	NOTICE of Manual Filing filed by Defendant Siemens Medical Solutions USA, Inc. of Siemens Medical Solutions USA, Inc.'s Corrected Answer, Affirmative Defenses, and Counterclaims. (McEldowney, Sean) (Entered: 09/02/2010)
09/02/2010	78	AMENDED ANSWER to First Amended Complaint, and Counterclaims 77 filed by Defendant Siemens Medical Solutions USA, Inc.(lom) (Entered: 09/03/2010)
09/07/2010	79	PROOF OF SERVICE Executed by Counterclaim-Plaintiff Siemens Medical Solutions USA, Inc., upon Counterclaim-Defendant NeuroGrafix served on 9/3/2010, answer due 9/24/2010. Service of the Summons and Complaint were executed upon Arthur S. Beeman, Counsel of Record for NeuroGrafix in compliance with Federal Rules of Civil Procedure by method of service not specified. Original Summons returned. (McEldowney, Sean) (Entered: 09/07/2010)
09/07/2010	80	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. Pursuant to F.R.Civ.P. 16(b), an Initial Case Management Conference is set in this matter for Monday, November 1, 2010, at 11:00 a.m. The parties are reminded of their obligations to disclose information, confer on a discovery plan, and report to the Court, as required by F.R.Civ.P. 26 and the Local Rules of this Court. Trial counsel are ORDERED to be present. (See attached document for other requirements.) (lom) (Entered: 09/08/2010)
09/27/2010	81	PROOF OF SERVICE Executed by Counterclaim Plaintiff Siemens Medical Solutions USA, Inc.,

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upon Counterclaim Defendant Washington Research Foundation served on 9/16/2010, answer due 10/7/2010. Service of the Summons and Complaint were executed upon Jeff Eby, Chief Financial Officer in compliance with Federal Rules of Civil Procedure by service on a domestic corporation, unincorporated association, or public entity. Original Summons NOT returned. (McEldowney, Sean) (Entered: 09/27/2010)

09/27/2010	82	ANSWER to Answer to Complaint (Discovery), Counterclaim, Answer to Complaint (Discovery), 77 filed by Plaintiffs NeuroGrafix, Washington Research Foundation.(Beeman, Arthur) (Entered: 09/27/2010)
10/12/2010	83	PROOF OF SERVICE Executed by Plaintiff NeuroGrafix, upon Defendant Siemens Aktiengesellschaft served on 9/23/2010, answer due 10/14/2010. Service of the Summons and Complaint were executed upon Sean McEldowney, Counsel in compliance with Federal Rules of Civil Procedure by method of service not specified. Original Summons NOT returned. (Beeman, Arthur) (Entered: 10/12/2010)
10/18/2010	84	NOTICE of Manual Filing filed by Defendant Siemens Aktiengesellschaft of Siemens Aktiengesellschaft's Answer, Affirmative Defenses, and Counterclaims. (McEldowney, Sean) (Entered: 10/18/2010)
10/21/2010	85	ANSWER to Amended Complaint, 61 and <i>Affirmative Defenses</i> , filed by Defendant Siemens Aktiengesellschaft.(McEldowney, Sean) (Entered: 10/21/2010)
10/22/2010	86	NOTICE OF ERRATA filed by Defendant Siemens Aktiengesellschaft. correcting Notice of Manual Filing (G-92) 84 (McEldowney, Sean) (Entered: 10/22/2010)
10/25/2010	87	JOINT REPORT Rule 26(f) Discovery Plan and <i>Parties' Joint Initial Case Management Conference Statement</i> ; estimated length of trial 10 - 14 court days, filed by Plaintiff NeuroGrafix.. (Attachments: # 1 Exhibit A)(Beeman, Arthur) (Entered: 10/25/2010)
10/26/2010	88	STIPULATED PROTECTIVE ORDER by Judge Mariana R. Pfaelzer. (lom) (Entered: 10/28/2010)
11/01/2010	90	MINUTES: Proceedings: SCHEDULING CONFERENCE (held and completed) before Judge Mariana R. Pfaelzer: The Court orders counsel to prepare and submit a proposed order with new dates by 11/5/2010. Court Reporter: Margaret Babykin. (jp) (Entered: 11/05/2010)
11/03/2010	89	MINUTE IN CHAMBERS by Judge Mariana R. Pfaelzer: The Court ORDERS Plaintiffs to file a copy of their infringement contentions with the Court no later than 11/16/2010. The Court ORDERS Defendants to file a copy of their invalidity contentions with the Court no later than 1/3/2011. (jp) (Entered: 11/03/2010)
11/05/2010	91	JOINT REPORT of Case Management Conference Statement and Rule 26(f) Report filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 11/05/2010)
11/09/2010	92	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. The Court adopts the plaintiffs' proposed dates for the deadlines set forth in the parties' revised Rule 26(f) report 91 . (lom) (Entered: 11/09/2010)
11/12/2010	93	REQUEST to Substitute attorney Russ August & Kabat: Marc A. Fenster, Bruce D. Kuyper, Alexander C.D. Giza, Andrew D. Weiss in place of attorney Jones Day: Arthur S. Beeman, Pamela K. Fulmer, Brett A. Lovejoy, Brent D. Sokol, Noel Rodriguez, Matthew J. Silveira filed by Plaintiff and Counterdefendant NeuroGrafix. (Attachments: # 1 Proposed Order On Request for Approval of Substitution of Attorneys)(Beeman, Arthur) (Entered: 11/12/2010)
11/19/2010	94	ORDER by Judge Mariana R. Pfaelzer granting Request for Approval of Substitution of Attornes Marc A Fenster, Bruce D Kuyper, Alexander C D Giza, Andrew David Weiss for NeuroGرافي in place and stead of Brett Alan Lovejoy; Noel Rodriguez; Matthew J Silveira; Brent D Sokol; Arthur S Beeman and Pamela K Fulmer 93 . (jp) (Entered: 11/22/2010)
01/03/2011	95	DISCLOSURE of Invalidity Contentions filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc. (Attachments: # 1 Exhibit Exhibit A of Invalidity Contentions, # 2 Exhibit Exhibit B of Invalidity Contentions, # 3 Exhibit Exhibit A-1 of Invalidity Contentions, # 4

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Exhibit Exhibit A-2 of Invalidity Contentions, # [5](#) Exhibit Exhibit A-3 of Invalidity Contentions, # [6](#) Exhibit Exhibit A-4 of Invalidity Contentions, # [7](#) Exhibit Exhibit A-5 of Invalidity Contentions, # [8](#) Exhibit Exhibit A-6 of Invalidity Contentions, # [9](#) Exhibit Exhibit A-7 of Invalidity Contentions, # [10](#) Exhibit Exhibit A-8 of Invalidity Contentions, # [11](#) Exhibit Exhibit A-9 of Invalidity Contentions, # [12](#) Exhibit Exhibit A-10 of Invalidity Contentions, # [13](#) Exhibit Exhibit A-11 of Invalidity Contentions, # [14](#) Exhibit Exhibit A-12 of Invalidity Contentions, # [15](#) Exhibit Exhibit A-13 of Invalidity Contentions, # [16](#) Exhibit Exhibit A-14 of Invalidity Contentions)(McEldowney, Sean) (Entered: 01/03/2011)

01/07/2011	96	NOTICE OF COMPLIANCE filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 01/07/2011)
01/11/2011	97	NOTICE Notice of Errata From November 1, 2010 Initial Status Conference filed by Plaintiff NeuroGrafix. (Fenster, Marc) (Entered: 01/11/2011)
01/11/2011	98	Defendants' Supplement to Plaintiff's Notice of Errata filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc. (McEldowney, Sean) (Entered: 01/11/2011)
02/02/2011	99	Joint Claim Construction And Prehearing Statement filed by Plaintiff NeuroGrafix (Attachments: # 1 Exhibit to Joint Claim Construction and Prehearing Statement)(Weiss, Andrew) (Entered: 02/02/2011)
02/11/2011	100	NOTICE of Manual Filing filed by Plaintiff NeuroGrafix of JOINT APPENDIX CONTAINING FILE HISTORY OF PATENT-IN-SUIT FOR CLAIM CONSTRUCTION BRIEFING. (Weiss, Andrew) (Entered: 02/11/2011)
02/11/2011	101	NOTICE OF MOTION AND Joint MOTION to Exceed Page Limitation Claim Construction Brief and responsive brief filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 02/11/2011)
02/11/2011	102	NOTICE OF LODGING filed <i>JOINT APPENDIX OF FILE HISTORY OF PATENT-IN-SUIT FOR CLAIM CONSTRUCTION BRIEFING</i> re Notice of Manual Filing (G-92) 100 (Weiss, Andrew) (Entered: 02/11/2011)
02/11/2011	103	BRIEF filed by Plaintiffs NeuroGrafix. <i>Opening Claim Construction Brief</i> (Attachments: # 1 Affidavit of Andrew D. Weiss, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N)(Weiss, Andrew) (Entered: 02/11/2011)
02/14/2011	104	PROPOSED] ORDER GRANTING MOTION TO FILE BRIEFS NOT TO EXCEED 35 PAGES re Joint MOTION to Exceed Page Limitation Claim Construction Brief and responsive brief 101 filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 02/14/2011)
02/22/2011	105	ORDER by Judge Mariana R. Pfaelzer: granting 101 Motion for Leave to File Excess Pages. It is ORDERED as follows: Plaintiffs NEUROGRAFIX and WASHINGTON RESEARCH FOUNDATION may file an opening Claim Construction Brief with a page limit of 35 pages, and Defendants SIEMENS MEDICAL SOLUTIONS USA, INC. and SIEMENS AKTIENGESELLSCHAFT may file a responsive brief with a page limit of 35 pages. (lom) (Entered: 02/23/2011)
02/25/2011	106	<i>Rersponsive Claim Construction Brief</i> re: Brief (non-motion non-appeal), Brief (non-motion non-appeal) 103 (Attachments: # 1 Declaration of Sean M. McEldowney, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Exhibit 19)(McEldowney, Sean) (Entered: 02/25/2011)
03/08/2011	107	REPLY filed by Plaintiff NeuroGrafix to Brief (non-motion non-appeal), Brief (non-motion non-appeal) 103 <i>Plaintiffs' Reply Claim Construction Brief</i> (Attachments: # 1 Supplemental Weiss Decl., # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H)(Weiss, Andrew) (Entered: 03/08/2011)
03/17/2011	108	REPLY filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.,

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Counter Claimant Siemens Medical Solutions USA, Inc. to Brief (non-motion non-appeal), Brief (non-motion non-appeal) [103](#) (Attachments: # [1](#) Declaration of Sean M. McEldowney in Support of Siemens' Sur-Reply Brief, # [2](#) Exhibit Exhibit 20, # [3](#) Exhibit Exhibit 21, # [4](#) Exhibit Exhibit 22, # [5](#) Exhibit Exhibit 23a, # [6](#) Exhibit Exhibit 23b, # [7](#) Exhibit Exhibit 24, # [8](#) Exhibit Exhibit 25, # [9](#) Exhibit Exhibit 26, # [10](#) Exhibit Exhibit 27, # [11](#) Exhibit Exhibit 28, # [12](#) Exhibit Exhibit 29, # [13](#) Exhibit Exhibit 30a, # [14](#) Exhibit Exhibit 30b, # [15](#) Exhibit Exhibit 31, # [16](#) Exhibit Exhibit 32, # [17](#) Exhibit Exhibit 33a, # [18](#) Exhibit Exhibit 33b, # [19](#) Exhibit Exhibit 33c, # [20](#) Exhibit Exhibit 34, # [21](#) Exhibit Exhibit 35, # [22](#) Exhibit Exhibit 36, # [23](#) Exhibit Exhibit 37, # [24](#) Exhibit Exhibit 38, # [25](#) Exhibit Exhibit 39, # [26](#) Exhibit Exhibit 40, # [27](#) Exhibit Exhibit 41a, # [28](#) Exhibit Exhibit 41b, # [29](#) Exhibit Exhibit 41c)(McEldowney, Sean) (Entered: 03/17/2011)

03/24/2011	109	MINUTES OF MARKMAN HEARING held before Judge Mariana R. Pfaelzer. Court and counsel discuss the case, patents and terms at issue. The Court takes the matter under submission and its order will follow. Court Reporter: Sheri Kleeger. (lom) (Entered: 03/28/2011)
03/28/2011	110	NOTICE of Supplemental Authority in Response to New Argument Raised By Defendants during Markman Hearing filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 03/28/2011)
03/30/2011	111	REPLY filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc. to Brief (non-motion non-appeal), Brief (non-motion non-appeal) 103 <i>Plaintiff NeuroGrafix's Notice of Supplemental Authority in Response to New Argument Raised by Defendants During Markman Hearing</i> (McEldowney, Sean) (Entered: 03/30/2011)
04/06/2011	112	NOTICE of Manual Filing filed by Plaintiff NeuroGrafix of Infringement Contentions Filed Under Seal. (Giza, Alexander) (Entered: 04/06/2011)
04/06/2011	113	SEALED DOCUMENT- Under Seal Plaintiff Neurografix's Infringement Contentions. (Attachments: Part 2, Part 3, Part 4, Part 5)(mat) (Entered: 04/08/2011)
05/05/2011	114	CLAIM CONSTRUCTION ORDER by Judge Mariana R. Pfaelzer. The Court declines to address the indefiniteness issue regarding conspicuity at this time. The Court presumes that the parties will wish to file motions for summary judgment at a later point. Accordingly, the Court will set a status conference to discuss the next steps in the case. (lom) (Entered: 05/06/2011)
05/19/2011	115	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. The Court on its own motion sets a Telephonic Status Conference Call for Thursday, May, 26, 2011, at 1:30 p.m. The "call-in" information will be provided to counsel in by e-mail. (lom) (Entered: 05/20/2011)
05/26/2011	116	MINUTES OF IN CHAMBERS - TELEPHONIC CONFERENCE CALL (held & completed) before Judge Mariana R. Pfaelzer. Court and counsel discuss the status of the case. The Court orders the parties to meet and confer, file a briefing schedule on or before Friday, June 3, 2011. Court Reporter: Mark Schweitzer. (lom) (Entered: 06/03/2011)
06/03/2011	117	Parites' Proposed Schedule For Post-Markman Issues filed by Plaintiff NeuroGrafix (Weiss, Andrew) (Entered: 06/03/2011)
06/10/2011	118	MINUTES IN CHAMBERS by Judge Mariana R. Pfaelzer. The Court adopts the parties' proposed schedule for post-Markman issues submitted on Friday, June 3, 2011, 117 . Siemens will file its summary judgment brief regarding invalidity on Friday, July 15, 2011. NeuroGrafix will file its opposition to the summary judgment regarding invalidity on Monday, August 8, 2011. Siemens will file its opening brief regarding the claim term "conspicuity of 1.1" on Wednesday, August 24, 2011. Siemens will file its reply brief to NeuroGrafix's opposition to summary judgment on Wednesday, August 31, 2011. NeuroGrafix will file its responsive brief regarding claim construction on Monday, September 12, 2011. Siemens will file its reply brief regarding claim construction on Thursday, September 22, 2011 at 2:00 p.m. PDT. No surreplies will be allowed. The parties are to contact the Courtroom Clerk to set a hearing date. (lom) (Entered: 06/13/2011)
07/15/2011	119	NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Memorandum Memorandum in Support of

07/15/2011	120	DECLARATION of Sean M. McEldowney In Support Of MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit 1 - J.V. Hajnal, et al., MR Imaging of Anistropically Restricted Diffusion of Water in the Nervous System: Technical, Anatomic, and Pathologic Considerations, 15 J. Computer Assisted Tomography 1 (1991), # 2 Exhibit 2 - Letter from Weiss to McEldowney, dated May 18, 2011, # 3 Exhibit 3 - Email from Weiss to McEldowney, dated May 24, 2011, # 4 Exhibit 4 - U.S. Patent No. 5,560,360, # 5 Exhibit 5 - Excerpts of Tabers Cyclopedic Medical Dictionary (1993), # 6 Exhibit 6 - Excerpts from Plaintiff NeuroGrafixs Disclosure of Asserted Claims and Infringement Contentions, dated November 10, 2010, # 7 Exhibit 7 - Excerpts from Filler deposition, dated February 22, 2011, # 8 Exhibit 8 - Excerpts from the Filler expert report, dated January 24, 2011, # 9 Exhibit 9 - Letter from McEldowney to Weiss, dated May 12, 2011)(McEldowney, Sean) (Entered: 07/15/2011)
07/15/2011	121	STATEMENT of of Uncontroverted Facts and Conclusions of Law MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 07/15/2011)
07/15/2011	122	NOTICE OF LODGING filed re MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 (Attachments: # 1 Proposed Order Granting Siemens Motion for Partial Summary Judgment of Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order)(McEldowney, Sean) (Entered: 07/15/2011)
07/18/2011	123	NOTICE of Change of Attorney Information for attorney Fredricka Ung counsel for Plaintiff NeuroGrafix. Filed by Plaintiff NeuroGrafix (Ung, Fredricka) (Entered: 07/18/2011)
08/01/2011	124	MINUTE: IN CHAMBERS: The Court on its own motion sets the hearing on Siemens Motion for Siemens Motion for Partial Summary Judgment of Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62in U.S. Patent No. 5,560,360 in Light of Claim Construction Order (fld 7/15/2011) 119 for Wednesday, October 5, 2011, at 11:00 a.m. by Judge Mariana R. Pfaelzer. (ir) (Entered: 08/03/2011)
08/08/2011	125	PLAINTIFFS' OPPOSITION TO SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY REGARDING CLAIMS 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, AND 62 IN U.S. PATENT NO. 5,560,360 IN LIGHT OF CLAIM CONSTRUCTION ORDER re: MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 filed by Plaintiff NeuroGrafix. (Attachments: # 1 Declaration OF MICHAEL N. BRANT-ZAWADZKI, # 2 Declaration ANDREW D. WEISS, # 3 Exhibit A)(Weiss, Andrew) (Entered: 08/08/2011)
08/08/2011	126	STATEMENT of PLAINTIFFS NEUROGRAFIX AND WASHINGTON RESEARCH FOUNDATION'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACTS AND RESPONSE TO SIEMENS' STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 08/08/2011)
08/08/2011	127	NOTICE of Manual Filing filed by Plaintiff NeuroGrafix of EXHIBIT A TO DECLARATION OF ANDREW D. WEISS (DOCKET NO. 125). (Weiss, Andrew) (Entered: 08/08/2011)

08/08/2011	128	NOTICE OF MOTION AND MOTION for Reconsideration re Order, 114 filed by PLAINTIFF NeuroGrafix. Motion set for hearing on 9/12/2011 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Memorandum MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR RECONSIDERATION, # 2 Declaration ANDREW D. WEISS, # 3 Exhibit A, # 4 Proposed Order)(Weiss, Andrew) (Entered: 08/08/2011)
08/09/2011	129	EXHIBIT A to MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 <i>EXHIBIT A TO DECLARATION OF DR. BRANT-ZAWADZKI (DOCKET NO. 125)</i> filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 08/09/2011)
08/09/2011	130	EXHIBIT A to MOTION for Reconsideration re Order, 114 MOTION for Reconsideration re Order, 114 128 <i>EXHIBIT A TO DECLARATION OF ANDREW D. WEISS (DOCKET NO. 125)</i> filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 08/09/2011)
08/09/2011	131	NOTICE OF ERRATA filed by Plaintiff NeuroGrafix. <i>PLAINTIFF NEUROGRAFIX'S NOTICE OF ERRATA TO PLAINTIFFS' OPPOSITION TO SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT (DOCKET NO. 125)</i> (Weiss, Andrew) (Entered: 08/09/2011)
08/09/2011	132	EXHIBIT Filed filed by Plaintiff NeuroGrafix. <i>EXHIBIT A TO DECLARATION OF ANDREW WEISS (DOCKET NO. 125)</i> as to Objection/Opposition (Motion related), Objection/Opposition (Motion related), Objection/Opposition (Motion related) 125 . (Weiss, Andrew) (Entered: 08/09/2011)
08/09/2011	133	Notice of Withdrawal of Notice of Manual Filing (G-92) 127 filed by Plaintiff NeuroGrafix. (Weiss, Andrew) (Entered: 08/09/2011)
08/09/2011	134	EXHIBIT Filed filed by Plaintiff NeuroGrafix. <i>EXHIBIT A TO MICHAEL N. BRANT-ZAWADZKI's DECLARATION (DOCKET NO. 125)</i> as to Objection/Opposition (Motion related), Objection/Opposition (Motion related), Objection/Opposition (Motion related) 125 . (Weiss, Andrew) (Entered: 08/09/2011)
08/24/2011	135	NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. Motion set for hearing on 10/5/2011 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Memorandum Memo ISO Siemens' Motion for Partial SJ of Invalidity Based on Indefiniteness of "Conspicuity" in Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims)(McEldowney, Sean) (Entered: 08/24/2011)
08/24/2011	136	DECLARATION of S. McEldowney re MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit IND1, # 2 Exhibit IND2, # 3 Exhibit IND3, # 4 Exhibit IND4, # 5 Exhibit IND5, # 6 Exhibit IND6, # 7 Exhibit IND7, # 8 Exhibit IND8, # 9 Exhibit IND9, # 10 Exhibit IND10, # 11 Exhibit IND11, # 12 Exhibit IND12, # 13 Exhibit IND13, # 14 Exhibit IND14, # 15 Exhibit IND15, # 16 Exhibit IND16, # 17 Exhibit IND17)(McEldowney, Sean) (Entered: 08/24/2011)
08/24/2011	137	STATEMENT Uncontroverted Facts and Conclusions of Law ISO Siemens' Motion for Partial SJ of Invalidity Based on Indefiniteness of "Conspicuity" filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc. re: MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 , Declaration (non-motion), Declaration (non-motion), Declaration (non-motion) 136 . (McEldowney, Sean) (Entered: 08/24/2011)
08/24/2011	138	NOTICE OF LODGING filed re MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 , Statement,, 137 , Declaration (non-motion), Declaration (non-motion), Declaration (non-motion) 136 (Attachments: # 1 Proposed Order Proposed Order Granting Siemens' Motion for Partial SJ of Invalidity Based on Indefiniteness of "Conspicuity")(McEldowney, Sean) (Entered: 08/24/2011)

08/30/2011	139	MINUTE ORDER IN CHAMBERS by Judge Mariana R. Pfaelzer. Plaintiff NeuroGrafix filed a Motion for Reconsideration, docket # 128 on August 8, 2011. The motion was not noticed for hearing in the document, but was noticed for hearing in the text on the Courts docket. For clarification purposes, the Court will hear this motion on Monday, September 12, 2011, at 11:00 a.m. (cs) (Entered: 08/30/2011)
08/31/2011	140	REPLY In Support MOTION for Partial Summary Judgment as to Invalidity Regarding Claims 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, and 62 in U.S. Patent No. 5,560,360 in Light of Claim Construction Order 119 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Declaration Declaration of Sean M. McEldowney In Further Support of Siemens' Motion for Partial SJ of Invalidity, # 2 Exhibit 10, # 3 Exhibit 11, # 4 Exhibit 12, # 5 Exhibit 13, # 6 Exhibit 14, # 7 Exhibit 15)(McEldowney, Sean) (Entered: 08/31/2011)
09/01/2011	141	First STIPULATION for Hearing re MOTION for Reconsideration re Order, 114 MOTION for Reconsideration re Order, 114 128 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Proposed Order Granting Continuance on Hearing on Plaintiffs' Motion for Reconsideration)(McEldowney, Sean) (Entered: 09/01/2011)
09/02/2011	142	ORDER Granting Stipulation 141 by Judge Mariana R. Pfaelzer. It is hereby ORDERED as follows: 1. The hearing on Plaintiffs' Motion for Reconsideration will be combined with the hearing on the other pending motions 114 , 128 , 135 on October 5, 2011 at 11 a.m.; and 2. Defendants will file their opposition brief by Monday, September 12, 2011, and Plaintiffs will file their reply brief by Wednesday, September 21, 2011. (lom) (Entered: 09/07/2011)
09/12/2011	143	MEMORANDUM in Opposition to MOTION for Reconsideration re Order, 114 MOTION for Reconsideration re Order, 114 128 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Declaration of Sean M. McEldowney ISO Siemens' Memorandum In Opposition to Plaintiffs' Motion For Reconsideration of the Court's Claim Construction, # 2 Exhibit OMR1, # 3 Exhibit OMR2, # 4 Exhibit OMR3, # 5 Exhibit OMR4)(McEldowney, Sean) (Entered: 09/12/2011)
09/12/2011	144	OPPOSITION to MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 filed by Plaintiffs NeuroGrafix, Washington Research Foundation. (Attachments: # 1 Affidavit of Andrew D. Weiss, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14)(Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	145	DECLARATION of Aaron G. Filler, M.D. In Opposition of MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 filed by Plaintiffs NeuroGrafix, Washington Research Foundation. (Attachments: # 1 Exhibit 15)(Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	146	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 16</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	147	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 17 PART 1</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	148	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 17 PART 2</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	149	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 18</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)

09/12/2011	150	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 19</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	151	EXHIBIT Filed filed by Plaintiffs NeuroGrafix, Washington Research Foundation. <i>EXHIBIT 20</i> as to Declaration (Motion related), Declaration (Motion related) 145 . (Weiss, Andrew) (Entered: 09/12/2011)
09/12/2011	152	STATEMENT OF <i>GENUINE DISPUTES OF MATERIAL FACTS AND RESPONSE TO SIEMENS' STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW</i> re: Response in Opposition to Motion,, 144 . (Weiss, Andrew) (Entered: 09/12/2011)
09/14/2011	153	NOTICE OF MOTION AND MOTION for Leave to file Surreply to Siemens Motion for Summary Judgement Regarding Hajnal (D.I. 119) filed by Plaintiffs NeuroGrafix. Motion set for hearing on 10/17/2011 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Exhibit A (Surreply), # 2 Exhibit A (Decl. of Andrew D. Weiss), # 3 Exhibit A (Ex. B to Weiss Decl.), # 4 Exhibit A (Ex. C to Weiss Decl.), # 5 Exhibit A (Ex. D to Weiss Decl.), # 6 Proposed Order)(Weiss, Andrew) (Entered: 09/14/2011)
09/15/2011	154	MEMORANDUM in Opposition to MOTION for Leave to file Surreply to Siemens Motion for Summary Judgement Regarding Hajnal (D.I. 119) MOTION for Leave to file Surreply to Siemens Motion for Summary Judgement Regarding Hajnal (D.I. 119) 153 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 09/15/2011)
09/15/2011	155	ORDER by Judge Mariana R. Pfaelzer: denying 153 Plaintiffs' Motion to File a Surreply to Respond to New Argument in Reply to Siemens Motions for Summary Judgment. IT IS ORDERED as follows: Plaintiffs NeuroGrafix and Washington Research Foundation may file a surreply to new argument in reply to Siemens Motion for Summary Judgment. Therefore, the surreply attached as Exhibit A to the Motion is deemed entered. The Court does not accept surreplies. (lom) (Entered: 09/16/2011)
09/21/2011	156	RESPONSE IN SUPPORT of MOTION for Reconsideration re Order, 114 MOTION for Reconsideration re Order, 114 128 filed by Plaintiff NeuroGrafix. (Attachments: # 1 Declaration Andrew D. Weiss, # 2 Exhibit 21, # 3 Exhibit 22, # 4 Exhibit 23)(Weiss, Andrew) (Entered: 09/21/2011)
09/22/2011	157	NOTICE OF MOTION AND MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. Motion set for hearing on 10/5/2011 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Memorandum Memorandum to Strike, # 2 Declaration Declaration of S. McEldowney, # 3 Exhibit MS1)(McEldowney, Sean) (Entered: 09/22/2011)
09/22/2011	158	NOTICE OF LODGING filed re MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 157 (Attachments: # 1 Proposed Order Granting Siemens' Motion to Strike Dr. Filler's Declaration and Exhibits)(McEldowney, Sean) (Entered: 09/22/2011)
09/22/2011	159	Joint STIPULATION to Expedite Briefing Schedule Regarding Siemens' Motion to Strike Dr. Filler's Declaration and Exhibits filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Proposed Order Granting Expedited Briefing Schedule Regarding Siemens' Motion to Strike Dr. Filler's Declaration and Exhibits)(McEldowney, Sean) (Entered: 09/22/2011)
09/22/2011	160	REPLY In Support MOTION for Partial Summary Judgment as to Invalidity Based on Indefiniteness of "Conspicuity" <i>In Claims 1, 3, 7, 11, 12, 18 and Their Asserted Dependent Claims</i> 135 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Declaration of S. McEldowney, # 2 Exhibit IND18, # 3 Exhibit IND19, # 4 Exhibit IND20, # 5 Exhibit IND21, # 6 Exhibit IND22, # 7 Exhibit IND23, # 8 Exhibit IND24)(McEldowney, Sean) (Entered: 09/22/2011)
09/22/2011	161	STATEMENT of Reply of Uncontroverted Facts MOTION for Partial Summary Judgment as to

09/22/2011	162	ORDER Granting Stipulation 159 by Judge Mariana R. Pfaelzer. It is hereby Ordered as follows: 1. The hearing on Siemens' motion to strike will be combined with the already-scheduled October 5, 2011 hearing on Siemens' underlying motion for partial summary judgment; 2. Siemens agreed to (and has) filed the motion to strike 157 by 12 p.m. on September 22, 2011; 3. Plaintiffs will file their opposition to Siemens' motion to strike by September 28, 2011; and 4. Siemens will, if necessary, file a reply concerning the motion to strike by September 30, 2011. (lom) (Entered: 09/27/2011)
09/28/2011	163	OPPOSITION OPPOSITION re: MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 157 filed by Plaintiff NeuroGrafix. (Attachments: # 1 Declaration Andrew D. Weiss, # 2 Exhibit 1)(Weiss, Andrew) (Entered: 09/28/2011)
09/30/2011	164	NOTICE of Change of Attorney Information for attorney Pamela K Fulmer counsel for Plaintiff NeuroGrafix. Pamela K. Fulmer will no longer receive service of documents from the Clerks Office for the reason indicated in the G-06 Notice.Pamela K. Fulmer is no longer attorney of record for the aforementioned party in this case for the reason indicated in the G-06 Notice. Filed by Plaintiff NeuroGrafix (Fulmer, Pamela) (Entered: 09/30/2011)
09/30/2011	165	NOTICE of Change of Attorney Information for attorney Arthur S Beeman counsel for Plaintiff NeuroGrafix. Arthur S. Beeman will no longer receive service of documents from the Clerks Office for the reason indicated in the G-06 Notice.Arthur S. Beeman is no longer attorney of record for the aforementioned party in this case for the reason indicated in the G-06 Notice. Filed by Plaintiff NeuroGrafix (Beeman, Arthur) (Entered: 09/30/2011)
09/30/2011	166	NOTICE of Change of Attorney Information for attorney Sean M McEldowney counsel for Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc..Brian N. Gross is no longer attorney of record for the aforementioned party in this case for the reason indicated in the G-06 Notice. Filed by Defendants\CC Plaintiff Sean M. McEldowney (McEldowney, Sean) (Entered: 09/30/2011)
09/30/2011	167	REPLY In Support of MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 MOTION to Strike Dr. Filler's Declaration and Exhibits Response in Opposition to Motion,, 144 157 filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc., Counter Claimant Siemens Medical Solutions USA, Inc.. (McEldowney, Sean) (Entered: 09/30/2011)
10/05/2011	169	MINUTES OF HEARING ON MOTIONS (held and completed) 1. SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITYREGARDING CLAIMS 3-5, 36, 37, 39-44, 46, 47, 49, 50, 55, 56, 58, 59, 61, AND 62 IN U.S. PATENT NO. 5,560,360 IN LIGHT OF CLAIM CONSTRUCTION ORDER (fld 7/15/2011) 119 ; 2. SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY BASED ON INDEFINITENESS OF CONSPICUITY IN CLAIMS 1, 3, 7, 11, 12, 18 AND THEIR ASSERTED DEPENDENT CLAIMS IN U.S. PATENT NO. 5,560,360 (fld 8/24/11) 135 ; 3. MOTION FOR RECONSIDERATION OF THE COURT'S MAY 5, 2011 CLAIM CONSTRUCTION ORDER (fld 8/8/11) 128 ; and 4. SIEMENS' MOTION TO STRIKE DR. FILLER'S DECLARATION AND EXHIBITS OFFERED AFTER DISCOVERY DEADLINES 157 held before Judge Mariana R. Pfaelzer. The Court takes the matter under submission and its order will follow. Court Reporter: Deborah Gackle. (lom) (Entered: 10/07/2011)
10/06/2011	168	APPLICATION for attorney Joseph F. Edell to Appear Pro Hac Vice(PHV Fee of \$275 receipt number 0973-9331486 paid.) filed by Defendants\Counterclaim Plaintiff Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing, # 2 Proposed Order On Application of Non-Resident Attorney to Appear in a Specific Case)(Dauchot, Luke) (Entered: 10/06/2011)

10/07/2011	170	ORDER by Judge Mariana R. Pfaelzer: granting 168 Application to Appear Pro Hac Vice by Attorney Joseph P. Eden on behalf of Defendant Siemens Medical Solutions USA, Inc., designating Luke L. Dauchot as local counsel. (lt) (Entered: 10/12/2011)
11/08/2011	171	MINUTES OF Telephonic Conference held before Judge Mariana R. Pfaelzer. The case is called and appearances are made. Court and counsel discuss the status of the case. Counsel will contact the court on or before November 18, 2011. Court Reporter: Rosalyn Adams. (cs) (Entered: 11/18/2011)
11/22/2011	172	Joint STIPULATION to Dismiss Case pursuant to Fed. R. Civ. P. 41(a)(1) in which the dismissal is with prejudice filed by Defendants Siemens Aktiengesellschaft, Siemens Medical Solutions USA, Inc..(McEldowney, Sean) (Entered: 11/22/2011)
11/22/2011	173	ORDER Granting Stipulation to Dismiss Case 172 by Judge Mariana R. Pfaelzer. IT IS HEREBY ORDERED that Case No. 10-CV-1990 MRP be and hereby is dismissed with prejudice, with each party to bear its own costs. (Made JS-6. Case Terminated.) (lom) (Entered: 11/29/2011)
11/29/2011	174	REPORT ON THE DETERMINATION OF AN ACTION Regarding a Patent or Trademark. (Closing) (Attachments: # 1 Order) (lom) (Entered: 11/29/2011)
01/03/2012	175	TRANSCRIPT for proceedings held on WEDNESDAY, OCTOBER 5, 2011. Court Reporter/Electronic Court Recorder: DEBORAH K. GACKLE, CSR, RPR, phone number (213) 620-1149. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 1/24/2012. Redacted Transcript Deadline set for 2/3/2012. Release of Transcript Restriction set for 4/2/2012. (mw) (Entered: 01/03/2012)
01/03/2012	176	NOTICE OF FILING TRANSCRIPT filed for proceedings WEDNESDAY, OCTOBER 5, 2011 (mw) (Entered: 01/03/2012)

PACER Service Center			
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09/28/2012 18:26:13			
PACER Login:	fh0004	Client Code:	
Description:	Docket Report	Search Criteria:	2:10-cv-01990-MRP -RZ End date: 9/28/2012
Billable Pages:	27	Cost:	2.70

Exhibit M

95-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEUROGRAFIX, a California corporation;
WASHINGTON RESEARCH
FOUNDATION, a not-for-profit Washington
corporation,
Plaintiffs,

vs.

SIEMENS MEDICAL SOLUTIONS USA,
INC., a Delaware corporation; and
SIEMENS AKTIENGESELLSCHAFT, a
German corporation,
Defendants.

SIEMENS MEDICAL SOLUTIONS USA,
INC.
Counterclaim Plaintiff,

vs.

NEUROGRAFIX, and WASHINGTON
RESEARCH FOUNDATION,
Counterclaim Defendants.

CASE NO. CV 10-1990 MRP(RZX)

**~~PROPOSED~~ ORDER
DISMISSING CASE WITH
PREJUDICE**

**The Hon. Mariana R. Pfaelzer
United States District Court Judge**

The Court has reviewed the stipulation of the parties regarding dismissal with prejudice of all claims and counterclaims in *NeuroGrafix et al. v. Siemens Medical Solutions USA, Inc. et al.*, Case No. 10-CV-1990 MRP. (D.I. 172.)

Pursuant to that stipulation and Rule 41(a) of the Federal Rules of Civil Procedure, **IT IS HEREBY ORDERED** that Case No. 10-CV-1990 MRP be and hereby is dismissed with prejudice, with each party to bear its own costs.

IT IS SO ORDERED.

Dated: November 22, 2011

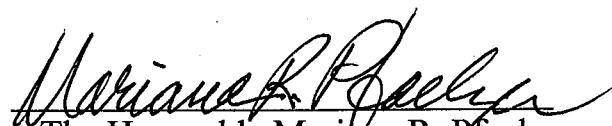

The Honorable Mariana R. Pfaelzer
United States District Judge

Exhibit N

Home	News	About NeuroGrafix	What We Do	Contact NeuroGrafix	
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Home » News » NeuroGrafix Statement on Siemens Litigation

NeuroGrafix Statement on Siemens Litigation

Posted on Nov 22, 2011

NeuroGrafix makes the following agreed announcement effective today November 22, 2011:

“The NeuroGrafix patent litigation against Siemens was dismissed in November 2011 pursuant to a confidential Settlement Agreement and Mutual Release. Pursuant to that agreement, Siemens obtained a license for itself and its customers.”

Comments are closed.

Latest News

- ▶ NeuroGrafix Statement on US Patent 5,560,360
- ▶ NeuroGrafix Statement on Siemens Litigation
- ▶ Thomson Reuters: Revenge of the Patent Holders
- ▶ University of California Regents Waives Sovereign Immunity in Response to Inverse Condemnation Suit
- ▶ Regents of the University of California Suit Announced

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News Archive

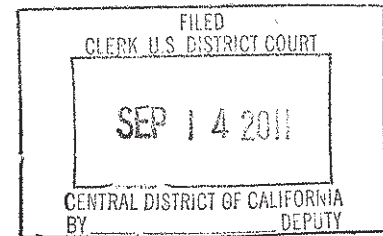
- ▶ November 2011
- ▶ May 2011
- ▶ October 2010
- ▶ May 2010
- ▶ March 2010
- ▶ January 2010
- ▶ June 2009
- ▶ May 2007

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Exhibit O

RUSS, AUGUST & KABAT

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

CV11-07591MMM(FMOx)

Case No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

NEUROGRAFIX, a California
corporation; NEUROGRAPHY
INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation;
WASHINGTON RESEARCH
FOUNDATION, a not-for-profit
Washington corporation,

vs.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

1 Plaintiffs NeuroGrafix and Washington Research Foundation ("WRF")
2 (collectively, "Plaintiffs") allege as follows:

3 1. This case is an action for patent infringement of United States Patent
4 No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set
5 forth in 35 U.S.C. §§271 and 280 through 285.

6 PARTIES

7 2. Plaintiff NeuroGrafix is a California corporation with its principal
8 place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa
9 Monica, California.

10 3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is
11 a California corporation with its principal place of business in Santa Monica,
12 California.

13 4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a
14 California corporation with its principal place of business in Santa Monica,
15 California.

16 5. Plaintiff WRF is a not-for-profit corporation incorporated and existing
17 under the laws of the State of Washington.

18 6. On information and belief, defendant The Regents of the University of
19 California ("The Regents") is a public corporation and agency of the State of
20 California. The Regents is a 26-member board, established under Article IX,
21 Section 9 of the California Constitution, which governs the University of
22 California.

23 JURISDICTION AND VENUE

24 7. This Court has federal subject matter jurisdiction over this action
25 under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

26 8. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a),
27 1391(c), and 1400(b), including without limitation because Defendant is
28

1 advertising, marketing, using, selling, and/or offering to sell products in this
2 Judicial District.

3 9. On May 12, 2011, The Regents entered into a stipulation wherein The
4 Regents waived their sovereign immunity as to the patent infringement cause of
5 action contained in this case. The Stipulation is attached to this Complaint as
6 Exhibit A.

7 **FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT**

8 10. Plaintiffs repeat and reallege the allegations contained in paragraphs 1
9 through 6 above, inclusive, as if fully repeated and restated herein.

10 11. The University of Washington, a public institution of higher education
11 in the state of Washington, is the owner by assignment of the '360 Patent entitled
12 "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued
13 on October 1, 1999. A true and correct copy of the '360 Patent is attached as
14 Exhibit B.

15 12. Aaron G. Filler, Jay S. Tsurda, Todd L. Richards, and Franklyn A.
16 Howe are listed as the inventors of the '360 Patent.

17 13. WRF holds substantially all rights in the '360 Patent and has
18 exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in
19 December of 1998, retaining only certain potential reversion rights.

20 14. The Regents received notice of the '360 Patent by as late as November
21 1996. In 1995, inventor Aaron Filler joined the University of California – Los
22 Angeles ("UCLA") as a Spine Fellow and continued his prior research and
23 development in the field of neural tract imaging. In July of 1996, Dr. Filler
24 became an Assistant Professor in Neurosurgery at UCLA. In October of 1996, the
25 United States Patent Office ("USPTO") granted the '360 Patent. After the '360
26 Patent issued, Dr. Filler used the technology of the '360 Patent while at UCLA, and
27 The Regents was aware of this fact.
28

1 15. While at UCLA, Dr. Filler continued research and development,
2 carefully recording and publishing academic peer reviewed reports based on all
3 imaging cases performed. However, Neil Martin – then the acting chairman of the
4 Division of Neurosurgery at the University of California – took a firm position that
5 the advances and developments in the '360 Patent did not merit further
6 development by Dr. Filler. This led Dr. Filler to depart from the faculty UCLA
7 and commence a private practice of medicine in May of 2001 to better assure the
8 development of these technologies for the common good of patients throughout the
9 world.

10 16. Just prior to his departure from UCLA, in March 2001, the Office of
11 the President of the University of California required Dr. Filler to assign another
12 invention to the Regents. This invention – later granted at United States Patent No.
13 6,560,477 for magnetic resonance imaging of joints – cites the '360 Patent on its
14 cover page. The Regents therefore have been aware of the '360 Patent since March
15 2001.

16 17. Upon information and belief, after the departure of Dr. Filler, The
17 Regents did not use the technology of the '360 Patent until January 2008.

18 18. Upon information and belief, The Regents have been and now are
19 directly, jointly and/or indirectly infringing, by way of inducing infringement
20 and/or contributing to the infringement of the '360 Patent in the State of California,
21 in this judicial district, and elsewhere in the United States by, among other things,
22 advertising, marketing, using, selling, and/or offering to sell products and services,
23 including without limitation, the performance of and provision of equipment and
24 methods for peripheral nerve MR Neurography and diffusion anisotropy based
25 tractography. By making, using, importing, offering for sale, and/or selling such
26 products, The Regents have injured the Plaintiffs and are thus liable to the
27 Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271. If The
28 Regents are not deemed to directly infringe any of the claims of the '360 Patent,

1 those who The Regents induce to infringe and/or whose infringement to which The
2 Regents contribute are the end users of the above-referenced products and services.

3 19. The Regents knowingly, willfully, and deliberately infringed and, on
4 information and belief, continue to infringe the '360 Patent in conscious disregard
5 of Plaintiffs' rights, making this case exceptional within the meaning of 35 U.S.C.
6 § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

7 20. As a result of The Regents infringement of the '360 Patent, Plaintiffs
8 have suffered monetary damages in an amount not yet determined, and will
9 continue to suffer damages in the future unless The Regents' infringing activities
10 are enjoined by this Court.

11 21. The Regents' wrongful acts have damaged and will continue to
12 damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for
13 those wrongs and injuries. In addition to their actual damages, Plaintiffs are
14 entitled to a preliminary and permanent injunction restraining and enjoining The
15 Regents and their agents, servants and employees, and all persons acting
16 thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiffs respectfully request that this Court enter:

19 1. A judgment in favor of Plaintiffs that The Regents have infringed,
20 directly and/or indirectly, by way of inducing and/or contributing to the
21 infringement of the '360 Patent;

22 2. An injunction enjoining The Regents and their officers, directors,
23 agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents,
24 and all others acting in concert or privity with any of them from infringing,
25 inducing the infringement of, or contributing to the infringement of the '360 Patent;

26 3. A judgment and order requiring The Regents to pay Plaintiffs their
27 damages, costs, expenses, and prejudgment and post-judgment interest for The
28 Regents' infringement of the '360 Patent as provided under 35 U.S.C. § 284;

4. An award to Plaintiffs for enhanced damages, as provided under 35 U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of The Regents' prohibited conduct;

5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and

6. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

Dated: September 14, 2011

RUSS AUGUST & KABAT


By: 
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IMAGE-BASED SURGICENTER
CORPORATION

1 Dated: September 14, 2011

2
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11 FOUNDATION

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RUSS, AUGUST & KABAT

Exhibit P

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Attorneys for Defendant
The REGENTS OF THE UNIVERSITY OF
CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

NEUROGRAFIX, a California
corporation; NEUROGRAPHY
INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; IMAGE-BASED
SURGICENTER, a California
corporation; WASHINGTON
RESEARCH FOUNDATION, a not-
for-profit Washington corporation,

Plaintiffs,

v.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA,

Defendant.

Case No. CV 11-07591 MRP (RZx)

**DEFENDANT'S ANSWER TO
PLAINTIFFS' COMPLAINT FOR
PATENT INFRINGEMENT AND
COUNTERCLAIMS**

JURY TRIAL DEMANDED

The Hon. Mariana R. Pfaelzer
United States District Court Judge

ANSWER

Defendant The Regents of the University of California (“The Regents” or “Defendant”), by its undersigned counsel, hereby answers Plaintiffs’ Complaint for Patent Infringement (“Complaint”) as follows:

1. Defendant admits that the Complaint purports to state a claim for an action for patent infringement of United States Patent No. 5,560,360 under the Patent Laws of the United States, as set forth in 35 U.S.C. §§ 271 and 280 through 285. Defendant denies the remaining allegations in paragraph 1.

PARTIES

2. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2, and therefore denies them.

3. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3, and therefore denies them.

4. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4, and therefore denies them.

5. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5, and therefore denies them.

6. Defendant admits that The Regents is a public corporation and agency of the State of California and that The Regents is a 26-member board, established under Article IX, Section 9 of the California Constitution. Defendant further admits that the University of California is governed by The Regents.

JURISDICTION AND VENUE

7. Defendant admits that the complaint purports to state a claim for patent infringement and that the court has federal subject matter jurisdiction over claims for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a). Defendant denies the remaining allegations in paragraph 7.

8. Defendant admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendant denies the remaining allegations in

1 paragraph 8.

2 9. Defendant admits that it entered into the stipulation with Plaintiffs
3 NeuroGrafix, Image-Based Surgicenter and Neurography Institute Medical
4 Associates on May 12, 2011 attached to the Complaint as Exhibit A, whereby The
5 Regents agreed to waive sovereign immunity with respect to a claim for
6 infringement of U.S. Patent No. 5,560,360 (“the ’360 Patent”) filed within 90 days
7 of dismissal of the case captioned in the stipulation. Defendant denies the
8 remaining allegations in paragraph 9.

9 **FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT**

10 10. Defendant incorporates by reference its responses to paragraphs 1-9 of
11 the Complaint as if fully set forth herein.

12 11. Defendant admits that the ’360 Patent lists The University of
13 Washington as the assignee and is titled “Image Neurography and Diffusion
14 Anisotropy Imaging.” Defendant is without sufficient knowledge or information to
15 form a belief as to the truth of the remaining allegations in paragraph 11, and
16 therefore denies them.

17 12. Defendant admits the allegations in paragraph 12 of the Complaint.

18 13. Defendant is without sufficient knowledge or information to form a
19 belief as to the truth of the allegations in paragraph 13, and therefore denies them.

20 14. Defendant is without sufficient knowledge or information to form a
21 belief as to the truth of the allegations in paragraph 14, and therefore denies them.

22 15. Defendant admits that Dr. Filler left the faculty at UCLA in 2001 and
23 that Neil Martin was appointed Chief of the Department of Neurosurgery at UCLA
24 in 2001. Defendant is without sufficient knowledge or information to form a belief
25 as to the truth of the remaining allegations in paragraph 15, and therefore denies
26 them.

27 16. Defendant is without sufficient knowledge or information to form a
28 belief as to the truth of the allegations in paragraph 16, and therefore denies them.

17. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17, and therefore denies them.

18. Defendant denies each and every allegation in paragraph 18.

19. Defendant denies each and every allegation in paragraph 19.

20. Defendant denies each and every allegation in paragraph 20.

21. Defendant denies each and every allegation in paragraph 21.

PRAYER FOR RELIEF

22. Defendant denies that Plaintiffs are entitled to the relief requested or to any relief whatsoever from Defendant, and specifically denies each and every allegation and prayer for relief contained in paragraphs (1) through (6) of Plaintiffs' prayer for relief.

JURY TRIAL DEMAND

23. Defendant admits that Plaintiffs demands a trial by jury of all issues so triable.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE (FAILURE TO STATE A CLAIM)

24. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE (NON-INFRINGEMENT)

25. Defendant has not infringed, and currently does not infringe and is not liable for any infringement, whether direct or indirect, of any claim in the '360 Patent.

THIRD DEFENSE (INVALIDITY)

26. The '360 Patent is invalid for failure to meet one or more of the conditions for patentability specified in Title 35, U.S.C., or the rules, regulations,

1 and law related thereto, including without limitation, in 35 U.S.C. §§ 101, 102, 103
2 and 112, because the alleged invention lacks patentable subject matter; was used or
3 known by others in this country or was patented or described in a publication
4 before the date of the alleged invention; or was patented or described in a
5 publication or was in public use or on sale for more than one year before the date
6 of the patent applications; or was not invented by the named inventors; or was
7 invented by another prior to the date of the alleged invention; or was obvious in
8 view of the prior art; or is indefinite; or does not contain a proper written
9 description; or does not disclose the best mode of the invention.

10 **FOURTH DEFENSE**
11 **(LACHES)**

12 27. The doctrine of laches bars Plaintiffs from obtaining all, or part, of the
13 relief they seek because Plaintiffs (or their affiliates or predecessors) knew or
14 should have known of Defendant's allegedly infringing activity, Plaintiffs (or their
15 affiliates or predecessors) unreasonably delayed filing a claim against Defendant,
16 and Defendant has been prejudiced thereby.

17 **FIFTH DEFENSE**
18 **(EQUITABLE ESTOPPEL)**

19 28. The doctrine of equitable estoppel bars Plaintiffs from obtaining all of
20 the relief they seek because Plaintiffs (or their affiliates or predecessors) knew or
21 should have known of Defendant's allegedly infringing activity, Plaintiffs (or their
22 affiliates or predecessors) misled Defendant by its conduct to reasonably infer that
23 Plaintiffs did not intend to enforce the '360 Patent against Defendant, and
24 Defendants relied on such conduct and will be prejudiced if Plaintiffs are permitted
25 to proceed with their claims.

26 **SIXTH DEFENSE**
27 **(LIMITATION ON DAMAGES)**
28

1 29. Plaintiffs claim for damages is barred, in whole or in part, by 35
2 U.S.C. § 286, and by 35 U.S.C. § 287 and/or Plaintiffs' failure to plead notice
3 thereunder.

4 **SEVENTH DEFENSE**
5 **(WAIVER/ACQUIESCENCE/UNCLEAN HANDS)**

6 30. Plaintiffs' suit is barred or its claim for recovery is limited under the
7 doctrines of waiver, acquiescence, estoppels, implied license, and/or unclean hands.

8 **EIGHTH DEFENSE**
9 **(LICENSE/PATENT EXHAUSTION)**

10 31. Plaintiffs' suit is barred or its claim for recovery is limited by license
11 and/or patent exhaustion.

12 **NINTH DEFENSE**
13 **(28 U.S.C. §1498)**

14 32. Plaintiffs' claims are barred by 28 U.S.C. § 1498 to the extent they
15 relate to use or manufacture of the inventions of the '360 patent by or for the
16 United States.

17 **TENTH DEFENSE**
18 **(NO INJUNCTIVE RELIEF)**

19 33. Plaintiffs are not entitled to injunctive relief because the alleged injury
20 is not immediate or irreparable, and Plaintiffs have an adequate remedy at law.

21 **ELEVENTH DEFENSE**
22 **(WILLFULLNESS)**

23 34. Plaintiffs are barred from obtaining a finding of willfulness or
24 receiving enhanced damages because they have failed to set forth facts alleging the
25 type of conduct required by *In re Seagate Tech.*, 497 F.3d 1360 (Fed. Cir. 2007)
26 which is a prerequisite for both a finding of willfulness and an award of enhanced
27
28

1 damages.

2 **TWELFTH DEFENSE**
3 **(COSTS BARRED IN ACTION FOR INFRINGEMENT**
4 **OF A PATENT CONTAINING AN INVALID CLAIM)**

5 35. Plaintiffs' claim for recovery of costs is barred for failure to comply
6 with the requirements of § 35 U.S.C. 288.

7 **THIRTEENTH DEFENSE**
8 **(COSTS BARRED IN ACTION FOR INFRINGEMENT**
9 **OF A PATENT CONTAINING AN INVALID CLAIM)**

10 36. Plaintiffs do not have standing to sue for infringement of the '360
11 Patent.

12 **ADDITIONAL AFFIRMATIVE DEFENSES RESERVED**

13 37. Defendant reserves any and all additional affirmative defenses
14 available to it under Title 35, U.S.C., or the rules, regulations, and law related
15 thereto, the Federal Rules of Civil Procedure, the Rules of this Court, or otherwise
16 in law or equity, now existing, or later arising, as may be discovered.
17

18 **COUNTERCLAIMS**

19 Defendant/Counterclaimant The Regents, for its counterclaims assert
20 Counterclaims against Plaintiffs/Counterdefendants NeuroGrafix, Image-Based
21 Surgicenter ("IBSC"), Neurography Institute Medical Associates ("NIMA") and
22 Washington Research Foundation ("WRF") (collectively,
23 "Plaintiffs/Counterdefendants") as follows:
24

25 **PARTIES**

26 1. Defendant/Counterclaimant The Regents is a public corporation and
27 agency of the State of California comprised of a 26-member board, established
28

1 under Article IX, Section 9 of the California Constitution. The University of
2 California is governed by The Regents.

3 2. Upon information and belief, Plaintiff/Counterdefendant NeuroGrafix
4 is a California corporation with its principal place of business in Santa Monica,
5 California.

6 3. Upon information and belief, Plaintiff/Counterdefendant NIMA is a
7 California corporation with its principal place of business in Santa Monica,
8 California.

9 4. Upon information and belief, Plaintiff/Counterdefendant IBSC is a
10 California corporation with its principal place of business in Santa Monica,
11 California.

12 5. Upon information and belief, Plaintiff/Counterdefendant WRF is a
13 not-for profit corporation incorporated and existing under the laws of the State of
14 Washington.

15 **JURISDICTION AND VENUE**

16 6. Defendant/Counterclaimant counterclaims against
17 Plaintiffs/Counterdefendants pursuant to the patent laws of the United States, Title
18 35 of the United States Code, and laws authorizing actions for declaratory
19 judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202, and
20 Federal Rule of Civil Procedure 13.

21 7. This Court has jurisdiction over these counterclaims pursuant to
22 28 U.S.C. §§ 1331, 1338(a), 2201(a), and 2202.

23 8. This Court has personal jurisdiction over Plaintiffs/Counterdefendants
24 by virtue, *inter alia*, of their filing of a complaint against Defendant in this Court.

25 9. By virtue of the averments of Plaintiffs/Counterdefendants' complaint
26 in this action and Defendant's answer thereto, an actual controversy exists between
27 Plaintiffs/Counterdefendants and Defendant/Counterclaimant as to whether the
28 '360 patent is invalid and/or not infringed by Defendant/Counterclaimant.

FIRST COUNTERCLAIM FOR RELIEF
(Declaration of Non-Infringement of the '360 Patent)

10. Defendant/Counterclaimant restates and incorporates by reference each of the averments of paragraphs 1 through 9 of its Counterclaims.

11. Plaintiffs/Counterdefendants claim to be the owners of U.S. Patent No. 5,560,360 (“the ’360 patent”).

12. Plaintiffs/Counterdefendants in this action allege infringement of the ’360 patent by Defendant/Counterclaimant.

13. Defendant/Counterclaimant is not infringing, has not infringed, and is not liable for any infringement of any valid claim of the ’360 patent, and Plaintiffs/Counterdefendants are entitled to no relief for any claim in the Complaint for, *inter alia*, the reasons in paragraphs 1 through 36 of this Answer.

14. Absent a declaration of non-infringement of the ’360 patent, Plaintiffs/Counterdefendants will continue to assert the ’360 patent against Defendant/Counterclaimant and will in this way cause damage to Defendant/Counterclaimant.

15. Defendant/Counterclaimant seeks a declaration that it has not infringed and does not infringe the ’360 patent and that it is not otherwise liable as an infringer.

SECOND COUNTERCLAIM FOR RELIEF
(Declaration of Invalidity of the '360 Patent)

16. Defendant/Counterclaimant restates and incorporates by reference each of the averments of paragraphs 1 through 15 of its Counterclaims.

17. Plaintiffs/Counterdefendants claim to be the owner of U.S. Patent No. 5,560,360.

18. Plaintiffs/Counterdefendants in this action allege infringement of the ’360 patent by Defendant/Counterclaimant.

19. The '360 patent is invalid for failure to meet one or more of the conditions for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, in 35 U.S.C. §§ 101, 102, 103, and 112, because the alleged invention lacks patentable subject matter; was used or known by others in this country or was patented or described in a publication before the date of the alleged invention; or was patented or described in a publication or was in public use or on sale for more than one year before the date of the patent applications; or was not invented by the named inventors; or was invented by another prior to the date of the alleged invention; or was obvious in view of the prior art; or is indefinite; or does not contain a proper written description; or does not disclose the best mode of the invention.

20. Absent a declaration of invalidity of the '360 patent, Plaintiffs/Counterdefendants will continue to assert the '360 patent against Defendant/Counterclaimant and will in this way cause damage to Defendant/Counterclaimant.

21. Defendant/Counterclaimant seeks a declaration that the claims of the '360 patent are invalid for failure to satisfy one or more of the conditions for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, in 35 U.S.C. §§ 101, 102, 103, and 112.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaimant prays for judgment with respect to Plaintiffs/Counterdefendants' Complaint, Defendant's Defenses and the above Counterclaims as follows:

- a) that Plaintiffs/Counterdefendants' complaint be dismissed with prejudice and that the relief requested by Plaintiffs/Counterdefendants and any relief whatsoever in favor of Plaintiffs/Counterdefendants be denied;

- b) for entry of judgment declaring that the claims of the '360 patent are not infringed by Defendant/Counterclaimant and that Defendant/Counterclaimant is not liable as an infringer;
- c) for entry of judgment declaring that the claims of the '360 patent are invalid;
- d) that the case be declared exceptional and that Defendant/Counterclaimant be awarded its attorneys' fees under 35 U.S.C. § 285 or as otherwise permitted by law;
- e) all costs for suit under 28 U.S.C. §§ 54, 1920 or otherwise permitted by law; and
- f) that Defendant/Counterclaimant has such other and further relief as the Court shall deem just and proper.

JURY DEMAND

Defendant/Counterclaimant hereby requests a trial by jury of all issues so triable.

Dated: January 18, 2012

FENWICK & WEST LLP

By: /s/ Carolyn Chang
Carolyn Chang

Attorneys for Defendant
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Exhibit Q

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General Electric Company*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC.;
IMAGE-BASED SURGICENTER
CORPORATION; and WASHINGTON
RESEARCH FOUNDATION,

Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Defendant.

Case No. 2:11-cv-07591-MRP-RZ

**GENERAL ELECTRIC COMPANY'S
NOTICE OF MOTION TO INTERVENE
PURSUANT TO FED. R. CIV. P. 24 AND
MEMORANDUM IN SUPPORT**

Hearing Date: Monday, April 23, 2012

Time: 11:00 a.m.

Courtroom: 12

Judge: Hon. Mariana R. Pfaelzer

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FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

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<i>Stewart-Warner Corp. v. Westinghouse Elec. Corp.,</i> 325 F.2d 822 (2d Cir. 1963)	3

RULES

Fed. R. Civ. P. 24(a)	2
Fed. R. Civ. P. 24(b)	4

PLEASE TAKE NOTICE that on April 23, 2012, or as soon thereafter as the matter may be heard in Courtroom 12 of the above-titled Court, General Electric Company ("GE") will and hereby does move the Court pursuant to Fed. R. Civ. P. 24 to intervene as a defendant and counter-claimant in this matter. GE expects that its counter-claims would be for a declaration of non-infringement and invalidity of the patent-in-suit.

I. PRELIMINARY STATEMENT

In their recently-served infringement contentions, Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc., Image-Based Surgicenter Corporation and Washington Research Foundation (collectively, "Plaintiffs") accused Defendant, the Regents of the University of California ("UC"), of infringing the patent-in-suit based, in part, upon UC's alleged use of seven GE magnetic resonance ("MR") imaging products. As a manufacturer of the accused products and an indemnitor of UC, GE should be permitted to intervene to protect its interests with respect to the products alleged to infringe in this case. In addition, Plaintiffs have stated publicly that they intend to assert their patent rights against purported "unlicensed infringers," and have specifically identified "users of MRI equipment from GE" other than UC as their targets. Thus, GE also has a substantial interest beyond the instant case in intervening to defend its products against Plaintiffs' claims.

II. STATEMENT OF FACTS

A. Plaintiffs' Allegations Implicate GE Products

Plaintiffs filed a lawsuit on October 15, 2010, asserting multiple state law claims against UC relating to UC's alleged use of neurography. (Dkt. 1, Ex. A.) In exchange for Plaintiffs' dismissal of its state law claims and its agreement not to pursue those or any other state law claims against UC, UC waived its sovereign immunity as to a patent infringement cause of action in federal court. (Dkt. 1 ¶ 9 & Ex. A.)

Plaintiffs filed this action on September 14, 2011, alleging that UC infringes U.S. Patent No. 5,560,360, entitled "Image Neurography and Diffusion Anisotropy Imaging" (the "'360 patent"). (*Id.* ¶¶ 1, 11). The complaint did not identify any accused products. (*See generally id.* ¶¶ 14-15, 17-18.) On March 9, 2012, Plaintiffs served a Disclosure of Asserted Claims and Infringement Contentions, identifying 20 asserted claims and identifying for the first time the specific accused devices. (Sklenar

NeuroGrafix has publicly indicated that it intends to assert the ‘360 patent against other GE customers, and warned GE customers that they must obtain a license from NeuroGrafix. Its website contains the following statement dated November 23, 2011:

There may be no license in place for users of MRI equipment from GE, Philips, Toshiba, or BrainLab.

Aaron Filler, MD, PhD, the CEO of NeuroGrafix says: “NeuroGrafix intends to continue to assert its patent rights against unlicensed infringers.”

III. GE MAY INTERVENE AS OF RIGHT TO PROTECT ITS INTERESTS IN THE SUBJECT MATTER OF THIS ACTION

(1) the applicant [] timely move[s] to intervene; (2) the applicant [has] a significantly protectable interest relating to the property or transaction that is the subject of the action; (3) the applicant [is] situated such that the disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest [is not] adequately represented by existing parties.

Arakaki v. Cavetano, 324 F.3d 1078, 1083 (9th Cir. 2003) (citation omitted); *see also* Fed. R. Civ. P. 24(a). Rule 24(a) “traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki*, 324 F.3d at 1083 (citation omitted).

1 GE meets each of Rule 24(a)'s requirements. *First*, GE's motion is timely. NeuroGrafix just
2 served infringement contentions on March 9 and March 12, 2012 that identified for the first time in this
3 action the specific accused products. (Part II.A, *supra*.) In addition, this case is still in its early stages.
4 A case management conference was held on February 28, 2011. (Dkt. 44.) A Markman hearing was
5 set for May 1, 2012 with simultaneous briefs due on April 20, 2012. (*Id.*) In addition, defendant's
6 invalidity contentions are due on April 9, 2012. (Feb. 28, 2012 Tr.)

7 *Second*, GE has a significant, protectable interest in the subject matter of this litigation as the
8 manufacturer of seven accused devices. As this Court found in *Ancora Techs., Inc. v. Toshiba Am.*
9 *Info. Sys., Inc.*, No. CV 08-0626, 2008 WL 4326788 (C.D. Cal. Sept. 22, 2008), a manufacturer "has
10 an obvious and direct interest in defending its [] customers in their use of Applicant's [] technology."
11 *Id.* at *1 (granting software manufacturer's unopposed motion to intervene in infringement case against
12 its customers who were accused of infringement based upon their use of Applicant's software and
13 technology); *see also Honeywell Int'l Inc. v. Audiovox Commc'ns Corp.*, No. Civ. A 04-1337, -1338, -
14 1536, 2005 WL 2465898, *2-4 (D. Del. May 18, 2005) (granting manufacturers' motions to intervene
15 under Rule 24(a) based upon "compelling interest" where customers' liability depended upon whether
16 manufacturers' components infringed); *see also Stewart-Warner Corp. v. Westinghouse Elec. Corp.*,
17 325 F.2d 822, 825 (2d Cir. 1963) ("[t]here is no doubt of the propriety of [the] intervention as the
18 manufacturer and vendor ... of equipment alleged by [plaintiff] to be an infringement...").

19 *Third*, if GE is not permitted to intervene, its ability to protect its interests will be impaired. As
20 described above, GE's products are directly at issue. *See Honeywell*, 2005 WL 2465898 at *4
21 (manufacturer "can rightly claim that its interests will be impaired or affected, as a practical matter, by
22 the disposition of the action, unless it is involved in the case directly and able to make its positions
23 known"). All of GE's customers potentially face litigation with Plaintiffs over the '360 patent, as does
24 GE itself. (Sklenar Decl., Ex. 3.) This raises the very real possibility that multiple '360 infringement
25 suits will be pending in various forums throughout the country that concern GE's products, leading to
26 increased discovery burdens for GE (which undoubtedly will be requested to provide technical
27 information and to identify deponents with knowledge regarding the accused products) and
28 inconsistent outcomes across the various cases as a result of different courts and different juries

1 deciding similar issues. Moreover, in the event that GE must indemnify its customers in the event that
2 they are found to infringe (or in the event that they settle with Plaintiffs to avoid litigation), Plaintiffs
3 may receive a windfall – one recovery from GE’s customers and then another against GE itself.

4 *Fourth*, it is unlikely that UC can adequately represent GE’s interests in this matter in the
5 absence of GE. GE “is uniquely situated to understand and defend its own product[s].” *Honeywell*,
6 2005 WL 2465898 at *4 (manufacturer’s interest would not be adequately represented by customers).
7 In addition, UC has no relationship with GE’s other customers, and thus has no incentive to consider
8 their interests – or GE’s – in litigating this case (or settling with Plaintiffs).

9 For all of these reasons, GE should be permitted to intervene as of right in order to protect its
10 interests.

11 **IV. ALTERNATIVELY, GE SHOULD BE PERMITTED TO INTERVENE BECAUSE IT**
12 **SHARES A COMMON DEFENSE WITH UC**

13 Even if GE may not intervene as of right, this Court should exercise its discretionary authority
14 under Rule 24(b) and permit intervention based upon GE’s “claim or defense that shares with the main
15 action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). As the manufacturer of
16 products accused in this matter, GE’s anticipated defenses and counterclaims of non-infringement and
17 invalidity would be based upon the same questions of law and fact as Plaintiffs’ claims. Accordingly,
18 permissive intervention is appropriate. *Reid v. General Motors Corp.*, 240 F.R.D. 257, 260 (E.D. Tex.
19 2006) (granting manufacturer’s motion to intervene under Rule 24(b) in lawsuit against its customers
20 where plaintiff contended that manufacturer’s software is a substantial part of the allegedly infringing
21 system).

22 **V. CONCLUSION**

23 For the reasons set forth above, GE requests that this Court grant its motion to intervene in this
24 matter as of right under Rule 24(a), or alternatively, that this Court permit GE to intervene pursuant to
25 Rule 24(b).
26
27
28

1 Dated: March 22, 2012

Respectfully submitted,

2
3 By:


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CERTIFICATE OF SERVICE

I hereby certify that, on March 22, 2012, a copy of General Electric Company's Motion To Intervene and all supporting documents were filed manually with the Clerk of Court. Copies of the documents have been served on the following counsel of record via electronic and regular U.S. mail:

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Exhibit R

Exhibit S

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA (Western
Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:11-cv-07591-MRP-RZ**

NeuroGrafix et al v. The Regents of the University of California
Assigned to: Judge Mariana R. Pfaelzer
Referred to: Magistrate Judge Ralph Zarefsky
Related Case: [2:10-cv-01990-MRP -RZ](#)
Cause: 35:271 Patent Infringement

Date Filed: 09/14/2011
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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ATTORNEY TO BE NOTICED

V.

Intervenor Defendant

Neurography Institute Medical Associates Inc

represented by **Alexander C D Giza**
(See above for address)
ATTORNEY TO BE NOTICED

Andrew David Weiss
(See above for address)
ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

Intervenor Defendant

NeuroGrafix

represented by **Alexander C D Giza**
(See above for address)
ATTORNEY TO BE NOTICED

Andrew David Weiss
(See above for address)
ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

Intervenor Defendant

Image-Based Surgicenter Corporation

represented by **Alexander C D Giza**
(See above for address)
ATTORNEY TO BE NOTICED

Andrew David Weiss
(See above for address)
ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)

ATTORNEY TO BE NOTICED
TERMINATED: 06/15/2012
ATTORNEY TO BE NOTICED

Intervenor Defendant

Washington Research Foundation

represented by **Bradley William Gunning**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Neurography Institute Medical Associates Inc

a California corporation

represented by **Adam S Hoffman**
(See above for address)
ATTORNEY TO BE NOTICED

Alexander C D Giza
(See above for address)
ATTORNEY TO BE NOTICED

Andrew David Weiss
(See above for address)
ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

NeuroGrafix

a California corporation

represented by **Adam S Hoffman**
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Alexander C D Giza
(See above for address)
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ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Image-Based Surgicenter Corporation

a California corporation

represented by **Adam S Hoffman**
(See above for address)
ATTORNEY TO BE NOTICED

Alexander C D Giza
(See above for address)
ATTORNEY TO BE NOTICED

Andrew David Weiss
(See above for address)
ATTORNEY TO BE NOTICED

Fredricka Ung
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Washington Research Foundation
a not-for-profit Washington corporation

represented by **Bradley William Gunning**
(See above for address)
TERMINATED: 06/15/2012
ATTORNEY TO BE NOTICED

Marc A Fenster
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

General Electric Company

represented by **Ali R Sharifahmadian**
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Brian Martinez
(See above for address)
ATTORNEY TO BE NOTICED

Jennifer Anne Sklenar
(See above for address)
ATTORNEY TO BE NOTICED

Marc A Cohn
(See above for address)
ATTORNEY TO BE NOTICED

Matthew M Wolf
(See above for address)
ATTORNEY TO BE NOTICED

Michael Elliot Ginsberg
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/14/2011	<u>1</u>	COMPLAINT against Defendant The Regents of the University of California. Case assigned to Judge Margaret M. Morrow for all further proceedings. Discovery referred to Magistrate Judge Fernando M. Olguin. (Filing fee \$ 350 Paid.) Jury Demanded., filed by Plaintiffs Neurography Institute Medical Associates Inc, NeuroGrafix, Image-Based Surgicenter Corporation, Washington

09/14/2011	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, identifying Other Affiliate Washington Research Foundation, Other Affiliate Providence Investment Company Limited for NeuroGrafix. (et) (mg). (Entered: 09/15/2011)
09/14/2011	3	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Washington Research Foundation, identifying Other Affiliate University of Washington for Washington Research Foundation. (et) (mg). (Entered: 09/15/2011)
09/14/2011	4	REPORT ON THE FILING OF AN ACTION Regarding a Patent or a Trademark (Initial Notification) filed by Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation. (et) (Entered: 09/15/2011)
09/14/2011	5	NOTICE TO PARTIES OF ADR PROGRAM filed. (et) (Entered: 09/15/2011)
09/14/2011	6	NOTICE of Related Case(s) filed by Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc. Related case: CV 10-1990 MRP. (RZx) (mg) Modified on 9/15/2011 (mg). (Entered: 09/15/2011)
09/14/2011	7	CORPORATE DISCLOSURE STATEMENT filed by Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc. (et) (mg). (Entered: 09/15/2011)
09/14/2011	8	CORPORATE DISCLOSURE STATEMENT filed by Plaintiff Washington Research Foundation identifying Other Affiliate University of Washington for Washington Research Foundation. (et) (mg). (Entered: 09/15/2011)
09/15/2011		21 DAY Summons Issued re Complaint - (Discovery), 1 as to Defendant Regents of the University of California. (bp) (Entered: 09/19/2011)
09/20/2011	9	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case- filed. Related Case No: CV 10-01990 MRP(RZx). Case transferred from Judge Margaret M. Morrow and Magistrate Judge Fernando M. Olguin to Judge Mariana R. Pfaelzer and Magistrate Judge Ralph Zarefsky for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 11-07591 MRP(RZx).Signed by Judge Mariana R. Pfaelzer (rn) (Entered: 09/20/2011)
09/23/2011	10	PROOF OF SERVICE Executed by Plaintiff NeuroGrafix, upon Defendant Regents of the University of California served on 9/16/2011, answer due 10/7/2011. Service of the Summons and Complaint were executed upon Rahni Singh, Authorized Agent in compliance with Federal Rules of Civil Procedure by personal service. Original Summons NOT returned. (Weiss, Andrew) (Entered: 09/23/2011)
10/04/2011	11	First STIPULATION Extending Time to Answer the complaint as to Regents of the University of California answer now due 10/28/2011, re Complaint - (Discovery), Complaint - (Discovery), Complaint - (Discovery) 1 filed by Defendant Regents of the University of California.(Chang, Carolyn) (Entered: 10/04/2011)
10/25/2011	12	Second STIPULATION Extending Time to Answer the complaint as to Regents of the University of California answer now due 11/4/2011, re Complaint - (Discovery), Complaint - (Discovery), Complaint - (Discovery) 1 filed by Defendant The Regents Of The University of California Regents of the University of California.(Chang, Carolyn) (Entered: 10/25/2011)
10/28/2011	13	NOTICE of Appearance filed by attorney Jennifer Jane Johnson on behalf of Defendant Regents of the University of California (Johnson, Jennifer) (Entered: 10/28/2011)
11/03/2011	14	Third STIPULATION for Extension of Time to File Answer to November 11, 2011 re Complaint - (Discovery), Complaint - (Discovery), Complaint - (Discovery) 1 filed by Defendant The Regents of the University of California Regents of the University of California. (Attachments: # 1 Proposed Order)(Chang, Carolyn) (Entered: 11/03/2011)

11/04/2011	<u>15</u>	ORDER by Judge Mariana R. Pfaelzer The Joint Stipulation between Plaintiffs and Defendant, hereby orders that. Defendant shall have an extension of 7 days from November 4, 2011 to file its response to Plaintiffs Complaint. Defendant must file its response by November 11, 2011. (cs) (Entered: 11/08/2011)
11/14/2011	<u>16</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Regents of the University of California. (Attachments: # <u>1</u> Proposed Order)(Chang, Carolyn) (Entered: 11/14/2011)
11/14/2011	<u>17</u>	NOTICE of Manual Filing filed by Defendant Regents of the University of California of Memorandum In Support of Motion to Dismiss; Declararation of Carolyn Chang; Application to File Under Seal and Proposed Order. (Chang, Carolyn) (Entered: 11/14/2011)
11/15/2011	<u>18</u>	NOTICE of Appearance filed by attorney Heather N Mewes on behalf of Defendant Regents of the University of California (Mewes, Heather) (Entered: 11/15/2011)
11/15/2011	<u>20</u>	SEALED DOCUMENT- Application to File Under Seal. (mat) (Entered: 11/29/2011)
11/15/2011	<u>21</u>	SEALED DOCUMENT- Declaration of Carolyn Chang in Support of Defendant The Regents of The University of California's MOTION TO DISMISS PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTEMEDICAL ASSOCIATES, INC. AND IMAGE-BASED SURGICENTER UNDER RULE 12(B)(1) FOR LACK OF STANDING.(mat) (Entered: 11/29/2011)
11/15/2011	<u>22</u>	SEALED DOCUMENT- Defendant's Memorandum of Points and Authorities in Support of its MOTION TO DISMISS PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC. AND IMAGE-BASED SURGICENTER UNDER RULE 12(B) (1) FOR LACK OF STANDING. (mat) (Entered: 11/29/2011)
11/15/2011	<u>23</u>	SEALED DOCUMENT- Order Granting Application to File Under Seal. (mat) (Entered: 11/29/2011)
11/21/2011	<u>19</u>	MINUTES RE RESETTNG DEFENDANT'S MOTION TO DISMISS <u>16</u> AND BRIEFINGSCHEDULE by Judge Mariana R. Pfaelzer. The Court on its on motion advances the Motion to Dismiss currently scheduled for Monday, January 2, 2012 at 11:00 a.m.(which is a court holiday) to Thursday, December 22, 2011 at 11:00 a.m. The Clerk having conferred with both parties have agreed upon a revised briefing schedule as follows: Opposition will be due on December 9, 2011 and Replies will be due on December 19, 2011. (lom) (Entered: 11/23/2011)
12/06/2011	<u>24</u>	NOTICE of Appearance filed by attorney Adam Hoffman on behalf of Plaintiff NeuroGrafix (Hoffman, Adam) (Entered: 12/06/2011)
12/09/2011	<u>25</u>	NOTICE of Manual Filing filed by Plaintiff NeuroGrafix of Application To File Under Seal; Proposed Order Granting Application To File Under Seal; OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC. AND IMAGE-BASED SURGICENTER UNDER RULE 12(B) (1) FOR LACK OF STANDING. (Fenster, Marc) (Entered: 12/09/2011)
12/09/2011	<u>26</u>	DECLARATION of Fredricka Ung In Support of Opposition MOTION to Dismiss for Lack of Jurisdiction <u>16</u> <i>DECLARATION OF FREDRICKA UNG IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC. AND IMAGE-BASED SURGICENTER UNDER RULE 12(B)(1) FOR LACK OF STANDING</i> filed by Plaintiff NeuroGrafix. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Ung, Fredricka) (Entered: 12/09/2011)
12/09/2011	<u>27</u>	APPLICATION to file under seal: Plaintiffs' Opposition to Defendant's Motion to Dismiss Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. and Image-Based Surgicenter Under Rule 12(b)(1) for Lack of Standing filed by Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc. Lodged [Prop] Order. (lom) (Entered: 12/13/2011)
12/12/2011	<u>28</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>27</u> Plaintiff's Application to file under seal:

		Plaintiffs' Opposition to Defendant's Motion to Dismiss Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. and Image-Based Surgicenter Under Rule 12(b)(1) for Lack of Standing. (lom) (Entered: 12/19/2011)
12/12/2011	30	SEALED DOCUMENT- Opposition to Defendant's Motion to Dismiss Plaintiffs Neurografix, Neurography Institute Medical Associates, Inc. and Image-Based Surgicenter Under Rule 12(B)(1) for Lack of Standing. (mat) (Entered: 12/19/2011)
12/19/2011	29	NOTICE of Manual Filing filed by Defendant Regents of the University of California of Defendant's Reply Memo ISO Motion to Dismiss; Application to File Under Seal; [Proposed] Order. (Chang, Carolyn) (Entered: 12/19/2011)
12/21/2011	31	MINUTE ORDER IN CHAMBERS by Judge Mariana R. Pfaelzer. The Court on its own motion advances the Motion to Dismiss currently scheduled for Thursday, December 22, 2011 at 11:00 a.m. to Thursday December 22, 2011 at 10:00 a.m. 19 (cs) (Entered: 12/21/2011)
12/21/2011	32	MINUTES IN CHAMBERS: RESETTING DEFENDANT'S MOTION TO DISMISS AND BRIEFING SCHEDULE by Judge Mariana R. Pfaelzer. The Court on its own motion advances the Motion to Dismiss 16 currently scheduled for Thursday, December 22, 2011 at 11:00 a.m. to Thursday December 22, 2011 at 10:00 a.m. (lom) (Entered: 12/21/2011)
12/21/2011	33	SEALED DOCUMENT- APPLICATION to File Under Seal. (mat) (Entered: 12/29/2011)
12/21/2011	34	SEALED DOCUMENT- ORDER Granting Application to File Under Seal. (mat) (Entered: 12/29/2011)
12/21/2011	35	SEALED DOCUMENT- Defendant's Reply MEMORANDUM of Points and Authorities in Support of its Motion to Dismiss Plaintiffs Neurografix, Neurography Institute Medical Associates, Inc. and Image-Based Surgicenter Under Rule 12(b)(1) for Lack of Standing. (mat) (Entered: 12/29/2011)
12/22/2011	36	MINUTES OF HEARING (held and completed) ON: DEFENDANT'S MOTION TO DISMISS PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC., AND IMAGE-BASED SURGICENTER UNDER RULE 12 (B)(1) FOR LACK OF STANDING (fld 11/14/2011) 16 before Judge Mariana R. Pfaelzer. Court and counsel discuss the status of the case and the pending motion. The Court takes the motion under submission and its order will follow. Court Reporter: Wil Wilcox. (lom) (Entered: 01/03/2012)
01/04/2012	37	MINUTES ORDER by Judge Mariana R. Pfaelzer. DENYING 16 Motion to Dismiss for Lack of Jurisdiction - See Order for further details. (cs) (Entered: 01/04/2012)
01/18/2012	38	ANSWER to Complaint - (Discovery), Complaint - (Discovery), Complaint - (Discovery) 1 with JURY DEMAND filed by Defendant Regents of the University of California.(Chang, Carolyn) (Entered: 01/18/2012)
01/19/2012	39	CORPORATE DISCLOSURE STATEMENT <i>and Certificate of Interested Parties</i> filed by Defendant Regents of the University of California (Chang, Carolyn) (Entered: 01/19/2012)
01/20/2012	40	MINUTE ORDER IN CHAMBERS setting Case Management Conference for 2/27/2012 11:00 AM before Judge Mariana R. Pfaelzer. See Order for further details and dates. (cs) (Entered: 01/20/2012)
02/10/2012		IN CHAMBERS MINUTE ORDER by Judge Mariana R. Pfaelzer. The Court on its motion continues the Case Management Conference Set for Monday, February 27, 2012 at 11:00 a.m. to Tuesday, February 28, 2012 at 1:30 p.m. 40 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(cs) TEXT ONLY ENTRY (Entered: 02/10/2012)
02/14/2012	41	RESPONSE filed by Plaintiff NeuroGrafix to Answer to Complaint (Discovery) 38 <i>PLAINTIFFS ANSWER TO THE COUNTERCLAIMS OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA</i> (Fenster, Marc) (Entered: 02/14/2012)
02/21/2012	42	STATUS REPORT <i>PARTIES' JOINT INITIAL CASE MANAGEMENT CONFERENCE STATEMENT AND RULE 26(F) REPORT</i> filed by Plaintiff NeuroGrafix. (Fenster, Marc) (Entered: 02/21/2012)

02/24/2012	43	NOTICE of Appearance filed by attorney Jeffrey Virlnelson Lasker on behalf of Defendant Regents of the University of California (Lasker, Jeffrey) (Entered: 02/24/2012)
02/28/2012	44	MINUTES OF THE CASE MANAGEMENT CONFERENCE held before Judge Mariana R. Pfaelzer. The case is called and appearances are made. Court and counsel discuss limiting the claims, the dates as agreed as to the claim construction are acceptable. The Court Orders the parties to meet and confer to resolve the claims. The parties will not exceed ten claims. The Markman Hearing is set for Monday, April 30, 2012 at 1:30 p.m. The parties will file simultaneous briefs on or before April 20, 2012.Court Reporter: Bridget Montero. (cs) (Entered: 02/29/2012)
02/29/2012		IN CHAMBERS MINUTE ORDER. The Markman hearing set for Monday, April 30, 2012 at 1:30 p.m. has been rescheduled to Tuesday, May 1, 2012 at 01:30 PM before Judge Mariana R. Pfaelzer. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(cs) TEXT ONLY ENTRY (Entered: 02/29/2012)
03/01/2012	45	TRANSCRIPT ORDER for date of proceedings 2/28/2012 to 2/28/2012 re: Scheduling Conference, Set/Reset Deadlines/Hearings,,,, 44 , as to Defendant Regents of the University of California Court Reporter Bridget Montero. Court will contact Meredith Erdman at merdman@fenwick.com with any questions regarding this order. Transcript portion requested: Other: Case Management Conference Proceeding. Category: Expedited. Transcript preparation will not begin until payment has been satisfied with the court reporter/recorder. (Erdman, Meredith) (Entered: 03/01/2012)
03/14/2012	46	TRANSCRIPT for proceedings held on 2-28-12 1:31 p.m.. Court Reporter/Electronic Court Recorder: Bridget Montero, phone number www.bridgetmontero.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter, www.bridgetmontero.com, or PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/4/2012. Redacted Transcript Deadline set for 4/14/2012. Release of Transcript Restriction set for 6/12/2012. (Montero, Bridget) (Entered: 03/14/2012)
03/15/2012	47	NOTICE OF FILING TRANSCRIPT filed for proceedings 2/28/12 1:31pm (ml) (Entered: 03/15/2012)
03/22/2012	48	MOTION to Intervene filed by Movant Pursuant to Fed.R.Civ.P. 24 and Memorandum in support General Electric Company. Motion set for hearing on 4/23/2012 at 11:00 AM before Judge Mariana R. Pfaelzer. Lodged [Prop] Order. (lom) (Entered: 03/23/2012)
03/22/2012	49	DECLARATION of Jennifer A. Sklenar in support MOTION to Intervene 48 filed by Movant General Electric Company. (lom) (Entered: 03/23/2012)
03/22/2012	50	CORPORATE DISCLOSURE STATEMENT AND NOTICE OF INTERESTED PARTIES filed by Movant General Electric Company. (lom) (Entered: 03/26/2012)
03/29/2012	51	EX PARTE APPLICATION to Reschedule Case Deadlines / <i>Extension of Case Deadlines</i> filed by Defendant Regents of the University of California. (Attachments: # 1 Proposed Order)(Chang, Carolyn) (Entered: 03/29/2012)
03/29/2012	52	MEMORANDUM of Points and Authorities in Support filed by Defendant Regents of the University of California. Re: EX PARTE APPLICATION to Reschedule Case Deadlines / <i>Extension of Case Deadlines</i> 51 (Chang, Carolyn) (Entered: 03/29/2012)
03/29/2012	53	DECLARATION of Carolyn Chang re Memorandum of Points and Authorities in Support (non-motion) 52 , EX PARTE APPLICATION to Reschedule Case Deadlines / <i>Extension of Case Deadlines</i> 51 filed by Defendant Regents of the University of California. (Chang, Carolyn) (Entered: 03/29/2012)
03/30/2012	54	OPPOSITION to EX PARTE APPLICATION to Reschedule Case Deadlines / <i>Extension of Case Deadlines</i> 51 PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC. AND IMAGE-BASED SURGICENTER CORPORATIONS OPPOSITION TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S EX PARTE APPLICATION FOR AN EXTENSION OF CASE DEADLINES filed by Plaintiff NeuroGrafix. (Attachments: # 1 Declaration Fredricka Ung, # 2 Exhibit 1)(Ung, Fredricka) (Entered: 03/30/2012)

		Regents of the University of California. (Lasker, Jeffrey) (Entered: 05/02/2012)
05/04/2012	67	ORDER that the deadline for the simultaneous claim construction briefing is extended to May 14, 2012. by Judge Mariana R. Pfaelzer, (cs) (Entered: 05/04/2012)
05/04/2012	68	ORDER by Judge Mariana R. Pfaelzer The claim construction hearing currently scheduled for May 22, 2012 at 1:30 p.m. is moved to May 31, 2012 at 1:30 p.m. (cs) (Entered: 05/04/2012)
05/11/2012	69	NOTICE of Appearance filed by attorney Brian Martinez on behalf of Intervenor Plaintiff General Electric Company (Martinez, Brian) (Entered: 05/11/2012)
05/11/2012	70	APPLICATION for attorney Mathew M. Wolf to Appear Pro Hac Vice(PHV Fee of \$325 receipt number 0973-10360330 paid.) filed by Intervenor General Electric Company. (Attachments: # 1 Exhibit A - Certificate of Good Standing, # 2 Proposed Order)(Sklenar, Jennifer) (Entered: 05/11/2012)
05/11/2012	71	APPLICATION for attorney Ali Sharifahmadian to Appear Pro Hac Vice(PHV Fee of \$325 receipt number 0973-10360419 paid.) filed by Intervenor General Electric Company. (Attachments: # 1 Exhibit A - Certificate of Good Standing, # 2 Exhibit B - Certificate of Good Standing, # 3 Proposed Order)(Sklenar, Jennifer) (Entered: 05/11/2012)
05/11/2012	72	APPLICATION for attorney Michael Ginsberg to Appear Pro Hac Vice(PHV Fee of \$325 receipt number 0973-10360484 paid.) filed by Intervenor General Electric Company. (Attachments: # 1 Exhibit A - Certificate of Good Standing, # 2 Proposed Order)(Sklenar, Jennifer) (Entered: 05/11/2012)
05/11/2012	73	EX PARTE APPLICATION to Exceed Page Limitation PLAINTIFFS EX PARTE APPLICATION TO EXTEND THE PAGE LIMIT OF PLAINTIFFS CLAIM CONSTRUCTION BRIEFS TO 30 PAGES filed by Plaintiff NeuroGrafix. (Attachments: # 1 Memorandum, # 2 Declaration of Fredricka Ung, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Proposed Order GRANTING PLAINTIFFS EX PARTE APPLICATION TO EXTEND THE PAGE LIMIT OF PLAINTIFFS CLAIM CONSTRUCTION BRIEFS TO 30 PAGES)(Ung, Fredricka) (Entered: 05/11/2012)
05/14/2012	74	BRIEF filed by Plaintiff NeuroGrafix. <i>PLAINTIFFS' CLAIM CONSTRUCTION BRIEF</i> (Attachments: # 1 Declaration Andrew D. Weiss, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11)(Weiss, Andrew) (Entered: 05/14/2012)
05/14/2012	75	BRIEF filed by Intervenor-Plaintiff and Defendant General Electric Company, Regents of the University of California. <i>for Claim Construction</i> (Sklenar, Jennifer) (Entered: 05/14/2012)
05/14/2012	76	DECLARATION of Jennifer A. Sklenar re Brief (non-motion non-appeal) 75 <i>in support of Claim Construction Brief</i> filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Attachments: # 1 Exhibit A part 1, # 2 Exhibit A part 2, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I)(Sklenar, Jennifer) (Entered: 05/14/2012)
05/15/2012	77	Notice of Withdrawal of Ex Parte Application to Exceed Page Limitation, 73 filed by Plaintiff NeuroGrafix. (Ung, Fredricka) (Entered: 05/15/2012)
05/17/2012	78	APPLICATION for attorney Marc A. Cohn to Appear Pro Hac Vice(PHV Fee of \$325 receipt number 0973-10389339 paid.) filed by Intervenor-Plaintiff General Electric Company. (Attachments: # 1 Exhibit A - Certificate of Good Standing, # 2 Proposed Order)(Sklenar, Jennifer) (Entered: 05/17/2012)
05/17/2012	79	ORDER by Judge Mariana R. Pfaelzer: granting 70 Application to Appear Pro Hac Vice by Attorney Matthew M Wolf on behalf of Intervenor Plaintiff General Electric Company, designating Jennifer Sklenar as local counsel. (lom) (Entered: 05/21/2012)
05/17/2012	80	ORDER by Judge Mariana R. Pfaelzer: granting 71 Application to Appear Pro Hac Vice by Attorney Ali R. Sharifahmadian on behalf of Intervenor Plaintiff General Electric Company, designating Jennifer Sklenar as local counsel. (lom) (Entered: 05/21/2012)

05/17/2012	<u>81</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>72</u> Application to Appear Pro Hac Vice by Attorney Michael Elliott Ginsberg on behalf of Intervenor Plaintiff General Electric Company, designating Jennifer Sklenar as local counsel. (lom) (Entered: 05/21/2012)
05/21/2012	<u>82</u>	<i>NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC., IMAGE-BASED SURGICENTER CORPORATION, AND WASHINGTON RESEARCH FOUNDATION'S ANSWER AND COUNTERCLAIMS TO GENERAL ELECTRIC COMPANYS INTERVENOR COMPLAINT</i> ANSWER to Intervenor Complaint, <u>61</u> filed by Plaintiff NeuroGrafix.(Ung, Fredricka) Modified on 6/14/2012 (lom). (Document is STRICKEN, see Minute Order <u>92</u> .) (Entered: 05/21/2012)
05/24/2012	<u>84</u>	ORDER by Judge Mariana R. Pfaelzer: granting <u>78</u> Application to Appear Pro Hac Vice by Attorney Marc A. Cohn on behalf of Intervenor General Electric Company, designating Jwennifer Sklenar as local counsel. (lt) (Entered: 05/31/2012)
05/30/2012	<u>83</u>	NOTICE of Association of Counsel associating attorney Michael Molano on behalf of Defendant Regents of the University of California. Filed by Defendant Regents of the University of California (Molano, Michael) (Entered: 05/30/2012)
05/31/2012	<u>86</u>	MINUTES OF Markman Hearing held before Judge Mariana R. Pfaelzer. The case is called and appearances are made. Court and counsel discuss the terms and claims at issue. The Court takes the matter under submission its order will follow. Court Reporter: Pat Cuneo. (cs) (Entered: 06/01/2012)
06/01/2012	<u>85</u>	TRANSCRIPT ORDER for date of proceedings 5/31/2012 to 5/31/2012 as to Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation Court Reporter Patricia Cuneo. Court will contact Jenny Wong at jwong@raklaw.com with any questions regarding this order. Transcript portion requested: Other: Claim Construction Hearing 5/31/2012. Category: Expedited. Transcript preparation will not begin until payment has been satisfied with the court reporter/recorder. (Ung, Fredricka) (Entered: 06/01/2012)
06/04/2012	<u>87</u>	JOINT STIPULATION REGARDING THE PARTIES AGREED CONSTRUCTIONS FOR CERTAIN CLAIM TERMS AND MODIFICATIONS TO THEIR PROPOSED CONSTRUCTIONS AS TO OTHER CLAIM TERMS filed by Plaintiff NeuroGrafix (Fenster, Marc) (Entered: 06/04/2012)
06/07/2012	<u>88</u>	NOTICE of Change of Attorney Information for attorney Heather N Mewes counsel for Defendant Regents of the University of California.Heather N. Mewes is no longer attorney of record for the aforementioned party in this case for the reason indicated in the G-06 Notice. Filed by Defendant The Regents of the University of California (Mewes, Heather) (Entered: 06/07/2012)
06/11/2012	<u>89</u>	REQUEST to Substitute attorney Marc A. Fenster in place of attorney Bradley W. Gunning filed by PLAINTIFF NeuroGrafix. (Attachments: # <u>1</u> Proposed Order ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY)(Fenster, Marc) (Entered: 06/11/2012)
06/13/2012	<u>90</u>	CLAIM CONSTRUCTION ORDER by Judge Mariana R. Pfaelzer. The Court adopts the constructions set forth in this opinion for the disputed terms of the 360 Patent. These constructions shall govern all proceedings in this case. See order for details. (cs) (Entered: 06/13/2012)
06/14/2012	<u>91</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Answer to Intervenor Complaint, <u>82</u> . The following error(s) was found: L.R. 3-2* Filing of Initiating Documents. Complaints and other initiating documents (Counterclaims) in civil cases shall be filed and served in the traditional manner on paper rather than electronically. Please manually filed document no. 82. Also, no counterclaim parties were added to the case. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (lom) (Entered: 06/14/2012)
06/14/2012	<u>92</u>	MINUTES IN CHAMBER by Judge Mariana R. Pfaelzer. The Court Orders document <u>82</u> stricken. Plaintiffs are ordered to manually file their Answer and Counterclaim in compliance with the Local Rule 3-2. (lom) (Entered: 06/14/2012)

06/14/2012	94	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Answer to Intervenor Complaint AND COUNTERCLAIM 82 . The following error(s) was found: L.R. 3-2 Filing of Initiating Documents. Complaints and other initiating documents (Counterclaims) in civil cases shall be filed and served in the traditional manner on paper rather than electronically. Please manually filed document no. 82. Also, no counterclaim parties were added to the case. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (lom) (Entered: 06/18/2012)
06/15/2012	93	ANSWER to Intervenor Complaint, 61 <i>NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC., IMAGE-BASED SURGICENTER CORPORATION, AND WASHINGTON RESEARCH FOUNDATION'S ANSWER TO GENERAL ELECTRIC COMPANYS INTERVENOR COMPLAINT</i> filed by Plaintiff NeuroGrafix.(Weiss, Andrew) (Entered: 06/15/2012)
06/15/2012	95	COUNTERCLAIM against Counter Defendant General Electric Company; Demand for Jury Trial filed by Counterclaimants Neurography Institute Medical Associates Inc, NeuroGrafix, Image-Based Surgicenter Corporation, Washington Research Foundation. (lom) (lom). (Entered: 06/19/2012)
06/15/2012	96	ORDER by Judge Mariana R. Pfaelzer: granting 89 Request to Substitute Attorney Marc A Fenster for Washington Research Foundation, as attorney of record in place and stead of Bradley W. Gunning for Plaintiff Washington Research Foundation. (lom) (Entered: 06/20/2012)
06/25/2012	97	IN CHAMBER MINUTE ORDER Scheduling a Status Conference for Tuesday, July 10, 2012 at 1:30 PM before Judge Mariana R. Pfaelzer. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (cs) TEXT ONLY ENTRY (Entered: 06/25/2012)
06/27/2012	98	TRANSCRIPT for proceedings held on 5/31/2012 1:30 p.m. Court Reporter: PAT CUNEO, CSR 1600, website: www.patcuneo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/18/2012. Redacted Transcript Deadline set for 7/28/2012. Release of Transcript Restriction set for 9/25/2012. (Cuneo, Patricia) (Entered: 06/27/2012)
06/27/2012	99	NOTICE OF FILING TRANSCRIPT filed for proceedings 5/31/2012 1:30 p.m. re Transcript 98 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(Cuneo, Patricia) TEXT ONLY ENTRY (Entered: 06/27/2012)
07/02/2012	100	<i>General Electric Company's ANSWER To Plaintiffs' Counterclaims</i> filed by Counter-Defendant General Electric Company.(Sklenar, Jennifer) (Entered: 07/02/2012)
07/10/2012	108	MINUTES OF Status Conference held before Judge Mariana R. Pfaelzer. The case is called and appearances are made. Court and counsel clarify the scope of (1) NeuroGrafix's infringement suit against UC and (2) GE's declaratory suit. The Court orders the parties to submit a proposed schedule including a trial date on or before July 16, 2012. Court Reporter: Wil Wilcox. (cs) (Entered: 08/02/2012)
07/13/2012	101	TRANSCRIPT for proceedings held on TUESDAY, JULY 10, 2012; 1:45 P.M. Court Reporter: Wil S. Wilcox, phone number 213-290-2849. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 8/3/2012. Redacted Transcript Deadline set for 8/13/2012. Release of Transcript Restriction set for 10/11/2012. (Wilcox, Wil) (Entered: 07/13/2012)
07/13/2012	102	NOTICE OF FILING TRANSCRIPT filed for proceedings TUESDAY, JULY 10, 2012; 1:45 P.M. re Transcript 101 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Wilcox, Wil) TEXT ONLY ENTRY. (Entered: 07/13/2012)
07/16/2012	103	Joint STIPULATION for Order re Parties' Agreed Proposed Case Schedule filed by Plaintiff NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation. (Attachments: # 1 Proposed Order)(Fenster, Marc) (Entered: 07/16/2012)

07/17/2012	104	ORDER ORDER RE JOINT STIPULATION REGARDING THE PARTIES AGREED PROPOSED CASE SCHEDULE by Judge Mariana R. Pfaelzer, re Stipulation for Order 103 (pj) (Entered: 07/18/2012)
07/23/2012	105	NOTICE OF MOTION AND MOTION for Reconsideration filed by Plaintiff NeuroGrafix. Motion set for hearing on 8/27/2012 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Proposed Order GRANTING PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC., IMAGE-BASED SURGICENTER CORPORATION, AND WASHINGTON RESEARCH FOUNDATIONS MOTION FOR RECONSIDERATION OF THE COURTS CONSTRUCTION OF PROCESSING AND PROCESSED)(Fenster, Marc) (Entered: 07/23/2012)
07/23/2012	106	DECLARATION of Fredricka Ung In Support Of MOTION for Reconsideration 105 filed by Plaintiff NeuroGrafix. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Ung, Fredricka) (Entered: 07/23/2012)
07/31/2012	107	MINUTES (IN CHAMBERS): ORDER by Judge Mariana R. Pfaelzer: DENYING 105 Neurografix's Motion for Reconsideration (pj) (Entered: 08/01/2012)
08/15/2012	109	NOTICE OF MOTION AND MOTION for Summary Judgment as to Non-Infringement and Invalidity filed by Intervenor-Plaintiff/Defendant General Electric Company, Regents of the University of California. Motion set for hearing on 12/17/2012 at 11:00 AM before Judge Mariana R. Pfaelzer. (Attachments: # 1 Proposed Judgment)(Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	110	MEMORANDUM in Support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	111	STATEMENT of Uncontroverted Facts and Conclusions of Law MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	112	DECLARATION of Jennifer A. Sklenar in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Attachments: # 1 Exhibit A Transcript Aaron Filler Excerpts, # 2 Exhibit B US 5560360, # 3 Exhibit C Basser Recognition, # 4 Exhibit D Pltfs 1st Supplemental Infringement Contentions, # 5 Exhibit E Pltfs 1st Supplemental Infringement Contentions [Claim Chart], # 6 Exhibit F 2012-05-01 Markman hearing transcript, # 7 Exhibit G Claim Construction Order, # 8 Exhibit H Basser ISMRM 1992 Abstracts, # 9 Exhibit I US 5539310, # 10 Exhibit J MPEP 608_01p August 1993)(Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	113	DECLARATION of Dr. Michael Moseley in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	114	DECLARATION of Jason Polzin in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Sklenar, Jennifer) Modified on 8/16/2012 (cs). (Entered: 08/15/2012)
08/15/2012	115	DECLARATION of J. Pablo Villablanca, M.D. in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	116	DECLARATION of Mark Hamamura, Ph.D. in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	117	DECLARATION of Jennifer Berry in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	118	DECLARATION of J. Gregory Davis in support of MOTION for Summary Judgment as to Non-

08/15/2012	119	DECLARATION of Robert Gould, Sc.D. in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	120	DECLARATION of Dharmendra Patel in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	121	DECLARATION of Arthur W. Toga, Ph.D. in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
08/15/2012	122	DECLARATION of Ronald Holthuisen in support of MOTION for Summary Judgment as to Non-Infringement and Invalidity 109 filed by Intervenor Plaintiff General Electric Company, Defendant Regents of the University of California. (Sklenar, Jennifer) (Entered: 08/15/2012)
09/19/2012	123	NOTICE OF MOTION AND MOTION for Protective Order for Confidentiality filed by Plaintiff Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation. (Fenster, Marc) (Entered: 09/19/2012)
09/19/2012	124	Joint STIPULATION for Protective Order filed by Plaintiff Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Proposed Order)(Fenster, Marc) (Entered: 09/19/2012)
09/24/2012	125	IN CHAMBER MINUTE ORDER. The Court sets a Status Conference on Monday, October 1, 2012 at 1:30 p.m. regarding the MOTION for Protective Order 123 and Stipulation for Protective Order 124 . The Status Conference is scheduled for Monday, October 1, 2012 at 1:30 PM before Judge Mariana R. Pfaelzer. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(cs) TEXT ONLY ENTRY (Entered: 09/24/2012)
09/28/2012	126	SUPPLEMENT MEMORANDUM IN SUPPORT OF THEIR MOTION FOR ENTRY OF PROTECTIVE ORDER REGARDING CONFIDENTIALITY filed by Plaintiffs Image-Based Surgicenter Corporation, NeuroGrafix, Neurography Institute Medical Associates Inc, Washington Research Foundation. (Weiss, Andrew) (Entered: 09/28/2012)

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09/28/2012 18:45:28			
PACER Login:	fh0004	Client Code:	
Description:	Docket Report	Search Criteria:	2:11-cv-07591-MRP-RZ End date: 9/28/2012
Billable Pages:	19	Cost:	1.90

Exhibit T

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES,
INC.; IMAGE-BASED SURGICENTER
CORPORATION; and WASHINGTON
RESEARCH FOUNDATION,

Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

Defendant.

Case No. 2:11-cv-07591-MRP-RZ

**GENERAL ELECTRIC
COMPANY'S AND THE REGENTS
OF THE UNIVERSITY OF
CALIFORNIA'S MOTION FOR
SUMMARY JUDGMENT OF NON-
INFRINGEMENT AND
INVALIDITY**

Hearing Date: December 17, 2012
Time: 11:00 a.m.
Courtroom: 12
Judge: Hon. Mariana Pfaelzer

1 GENERAL ELECTRIC COMPANY,
2 INTERVENOR-PLAINTIFF,
3 V.
4 NEUROGRAFIX; NEUROGRAPHY
5 INSTITUTE MEDICAL ASSOCIATES,
6 INC.; IMAGE-BASED SURGICENTER
CORPORATION; AND WASHINGTON
RESEARCH FOUNDATION,
7
8 DEFENDANTS.
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TO ALL PARTIES AND THEIR COUNSEL OF RECORD: Please take notice that Defendant The Regents of the University of California (the “Regents”) and Intervenor-Plaintiff General Electric Company (“GE”) hereby move for summary judgment that asserted claims 36, 37, 39-44, 46, 47, 49-54, and 63-66 of U.S. Patent No. 5,560,360 (“the ‘360 patent’”) are not infringed by the Regents nor GE and that the asserted claims of the ‘360 patent are invalid. This motion is based on this Notice; the accompanying Memorandum of Points and Authorities; the Declarations of Jennifer A. Sklenar, Jason Polzin, Dr. Michael Mosley, Ronald Holthuizen, Jennifer Berry, J. Gregory Davis, Robert Gould, Mark Hamamura, Dharmendra Patel, Arthur Toga, and J. Pablo Villablanca, including exhibits thereto; the Court’s Claim Construction Order, Docket No. 90; the Court’s Claim Construction Order in *NeuroGrafix et al. v. Siemens Medical Solutions USA, Inc. et al.*, 10-cv-1990 MRP (RZx), the pleadings and papers on file in this action; and such additional evidence and authority as may be offered at or before the time of oral argument on this Motion.

By this motion, GE and The Regents seek summary judgment: (1) that both the Regents and GE have not infringed any asserted claim of the '360 patent; (2) that claims 36 and 51, and their dependents, are invalid under 35 U.S.C. § 112 for lack of written description and lack of enablement.

August 15, 2012

Respectfully submitted,

By: s/ Jennifer A. Sklenar

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CLERK OF COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY: _____

12 MAY 25 AM 11:37

F11 FN

GENERAL ELECTRIC COMPANY,

Plaintiff,

v.

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC.;
IMAGE-BASED SURGICENTER
CORPORATION; and WASHINGTON
RESEARCH FOUNDATION,

Defendants.

Case No. **CV12-04586** STJ(JLx)

**GENERAL ELECTRIC COMPANY'S
COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

RELATED CASE

1
2 1. This case is related to case 2:11-cv-07591-MRP-RZ ("Related Case"), in which
3 Defendants, NeuroGrafix, Neurography Institute Medical Associates, Inc., Image-Based Surgicenter
4 Corporation and Washington Research Foundation (collectively, "Defendants"), have asserted
5 infringement of U.S. Patent No. 5,560,360 ("the '360 patent") by The Regents of the University of
6 California ("The Regents"), in part, based upon The Regents' use of MRI products sold by General
7 Electric Company ("GE").

8 2. Having been granted leave to intervene in the Related Case, GE, by and through its
9 attorneys, brought an intervenor complaint for declaratory judgment of non-infringement and invalidity
10 against the Defendants. Since GE intervened in the Related Case and filed its intervenor complaint,
11 Defendants have taken the position that GE's role in the case is limited to defending Defendants'
12 claims against The Regents as they relate to GE's products. While GE disagrees with Defendants'
13 position, out of an abundance of caution GE brings this complaint for declaratory judgment of non-
14 infringement and invalidity against Defendants, and in support thereof alleges as follows:

THE PARTIES

15
16 3. Plaintiff GE is a corporation that is organized and existing under the laws of the State of
17 New York, with its principal place of business at 3135 Easton Turnpike, Fairfield, CT 06828.

18 4. Upon information and belief, Defendant NeuroGrafix is a California corporation with
19 its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica,
20 California.

21 5. Upon information and belief, Defendant Neurography Institute Medical Associates,
22 Inc., is a California corporation with its principal place of business in Santa Monica, California.

23 6. Upon information and belief, Defendant Image-Based Surgicenter Corporation is a
24 California corporation with its principal place of business in Santa Monica, California.

25 7. Upon information and belief, Defendant Washington Research Foundation is a not-for-
26 profit corporation that is incorporated and existing under the laws of the State of Washington.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.* This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1338(a), 2201 and 2202.

9. This Court has personal jurisdiction over the Defendants, and venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (c), and by virtue of the Defendants having availed themselves of this forum when they filed their complaint against The Regents of the University of California in the Related Case.

FACTUAL ALLEGATIONS

10. Defendants contend that the University of Washington is the owner by assignment of the '360 patent, entitled "Image Neurography and Diffusion Anisotropy Imaging." (Related Case Dkt. 1, Ex. B.)

11. Defendants contend that Washington Research Foundation holds substantially all rights in the '360 patent and that it exclusively licensed substantially all rights in the '360 patent to NeuroGrafix in December, 1998, retaining only certain potential reversion rights.

12. Defendants have a history of asserting the '360 patent, having already sued Siemens Medical Solutions USA, Inc. and Siemens Aktiengesellschaft in the United States District Court for the Central District of California (Case No. 10-1990-MRP(RZX)), and having asserted infringement claims against The Regents of the University of California in the Related Case.

13. Defendants have publicly indicated that they intend to assert the '360 patent against other GE customers. NeuroGrafix's website contains the following "NeuroGrafix Statement on U.S. Patent 5,560,360," which is dated November 23, 2011:

At this time, NeuroGrafix advises & reminds users of MR Neurography, Diffusion Tensor Imaging (DTI, HARDI, and Q-Ball), or Diffusion Subtraction Neurography that they may be infringing US Patent 5,560,360 and its foreign equivalents if they are in the US, Japan, Europe, Canada or Australia if neither they nor their MRI manufacturer has a license. Please contact NeuroGrafix by email with any inquiries.

There may be no license in place for users of MRI equipment from GE, Philips, Toshiba, or BrainLab.

Patent infringement litigation between NeuroGrafix and the Regents of the University of California is ongoing in U.S. Federal District Court.

1 Aaron Filler, MD, PhD, the CEO of NeuroGrafix says: "NeuroGrafix intends to
2 continue to assert its patent rights against unlicensed infringers."

3 14. Defendants contend that certain "magnetic resonance hardware and software products
4 capable of diffusion anisotropy imaging ('DAI'), diffusion tensor imaging ('DTI') and/or DTI
5 tractography" infringe claims of the '360 patent including, but not necessarily limited to, the GE 1.5T
6 SignaHDx, GE Signa LX, GE 1.5T Signa, GE 1.5T Signa Echospeed, GE 1.5T EXCITE HD, GE 3T
7 Signa HD, and GE 3T EXCITE magnetic resonance imaging systems, including unidentified
8 "software," "associated workstations" and "upgrade packages required ... to perform DAI, DTI and/or
9 DTI tractography" (the "Accused Products").

10 15. Specifically, Defendants have alleged that The Regents use of the Accused Products
11 infringe certain claims of the '360 patent. Defendants have identified the claims alleged to be
12 infringed as claims 36, 37, 39-44, 46, 47, 49-54, 63-66 (the "Asserted Claims").

13 16. In addition, in response to GE's intervenor complaint, Defendants have asserted a
14 counterclaim against GE for inducing The Regents alleged infringement and have reserved the right to
15 assert claims of direct and indirect infringement against GE beyond the scope of NeuroGrafix's current
16 claims against The Regents. (Related Case Dkt. 82 at 4 n.1.)

17 17. GE sells MRI products that Defendants have alleged, either by their public statements
18 or in the Related Case, infringe the '360 patent (the "GE Products").

19 18. In light of the Defendants' public statements, as well as their litigation history, GE
20 reasonably believes that Defendants may sue GE or its customers for patent infringement based upon
21 the GE Products. Thus, the parties have a definite and concrete controversy.

22 19. GE believes that it has a right to make, use, import, offer to sell and/or sell the GE
23 Products free of any valid patent rights of the Defendants. GE also believes that the '360 patent is
24 invalid.

25 **FIRST CAUSE OF ACTION: DECLARATION OF NON-INFRINGEMENT**

26 20. GE repeats the allegations of the above paragraphs as if fully set forth herein.

27 21. Defendants have asserted the '360 patent against The Regents, a GE customer, in the
28 Related Case, alleging that the Accused Products and The Regents' use of the Accused Products

1 infringes the '360 patent. Specifically, Defendants have asserted claims 36, 37, 39-44, 46, 47, 49-54,
2 63-66 ("Asserted Claims") against The Regents.

3 22. Defendants have made public statements alleging that GE and/or its customers infringe
4 the '360 patent by their making, using, selling, offering to sell and/or importing the GE Products.

5 23. The GE Products do not infringe any claim of the '360 patent, and use of the GE
6 Products does not indirectly infringe any claim of the '360 patent, pursuant to 35 U.S.C. § 271.

7 24. There is an actual, substantial and continuing justiciable controversy between GE and
8 the Defendants having adverse legal interests of sufficient immediacy and reality to warrant the
9 issuance of a declaratory judgment regarding non-infringement of the '360 patent.

10 25. GE is entitled to a judicial declaration that the GE Products do not infringe any claim of
11 the '360 patent, and that use of the GE Products does not indirectly infringe any claims of the '360
12 patent.

13 **SECOND CAUSE OF ACTION: DECLARATION OF INVALIDITY**

14 26. GE repeats the allegations of the above paragraphs as if fully set forth herein.

15 27. The claims of the '360 patent are invalid for failure to comply with one or more
16 requirements of Title 35, United States Code, including, 35 U.S.C. §§ 101, 102, 103 and 112.

17 28. There is an actual, substantial and continuing justiciable controversy between GE and
18 the Defendants having adverse legal interests of sufficient immediacy and reality to warrant the
19 issuance of a declaratory judgment regarding the validity of the '360 patent.

20 29. GE is entitled to a judicial declaration that the claims of the '360 patent are invalid.

21 **DEMAND FOR JURY TRIAL**

22 30. GE demands a trial by jury on all issues so triable.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, GE respectfully seeks the following relief from this Court:

25 (a) A declaration and entry of judgment in favor of GE and against Defendants that the GE
26 Products do not infringe any claims of the '360 patent;

1 (b) A declaration and entry of judgment in favor of GE and against Defendants that GE and
2 GE's customers, including The Regents, are not liable for direct, contributory or induced infringement
3 of any claim of the '360 patent as to the GE Products;

4 (c) A declaration and entry of judgment in favor of GE and against Defendants that the
5 claims of the '360 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112;

6 (d) Defendants and their officers, agents, employees, representatives, counsel and all
7 persons in active concert or participation with any of them, directly or indirectly, be enjoined from
8 threatening or charging infringement of, or instituting any action for infringement of the '360 patent,
9 based upon the GE Products;

10 (e) Its costs and disbursements in connection with this litigation, as permitted pursuant to
11 35 U.S.C. § 284;

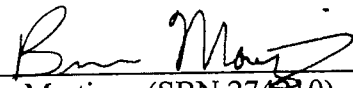
12 (f) A determination that this is an exceptional case within the meaning of 35 U.S.C. § 285,
13 and an award to GE of its reasonable attorney's fees; and

14 (g) Such other relief, in law and in equity, that this Court deems appropriate.
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1 Dated: May 25, 2012

Respectfully submitted,

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3 By:


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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

GENERAL ELECTRIC COMPANY,

PLAINTIFF(S)

v.

NEUROGRAFIX; NEUROGRAPHY INSTITUTE
 MEDICAL ASSOCIATES, INC.; IMAGE-BASED
 SURGICENTER CORPORATION; WASHINGTON
 RESEARCH FOUNDATION

DEFENDANT(S).

CASE NUMBER

CV12-04586 SJB(JLGx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jennifer Sklenar, whose address is ARNOLD & PORTER LLP, 777 S. Figueroa St., 44th Floor, Los Angeles, CA 90017. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: May 25, 2012

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

GENERAL ELECTRIC COMPANY

DEFENDANTS

NEUROGRAFIX; NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC.; IMAGE-BASED SURGICENTER CORPORATION; and WASHINGTON RESEARCH FOUNDATION

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Arnold & Porter LLP - Jennifer A. Sklenar (Bar No. 200434)
 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017-5744
 Telephone: 213-243-4000

Attorneys (If Known)

Marc A. Fenster
 Russ August & Kabat
 12424 Wilshire Boulevard, 12th Floor
 Los Angeles, CA 90025

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Declaratory Judgment

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV12-04536

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
 If yes, list case number(s): 2:11-CV-07591 M.R.P. (R.E.X.)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☒ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
	Connecticut

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County Washington	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

B. Maniz

Date

5/25/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Exhibit V

Link: 20

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

GENERAL ELECTRIC COMPANY,

Plaintiff,

V.

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL
ASSOCIATES, INC.; IMAGE-
BASED SURGICENTER
CORPORATION; and
WASHINGTON RESEARCH
FOUNDATION,

Defendants.

Case No. 2:12-cv-04586-MRP-RZ

Order Denying NeuroGrafix's Motion to Dismiss GE's Complaint for Declaratory Judgment as to Claims 1-53 and 55-63 for Lack of Subject Matter Jurisdiction

I. Introduction

General Electric Company (“GE”) makes MRI machines and software. Its customers include universities and hospitals. It insures these customers against patent infringement liability with indemnification agreements. NeuroGrafix is a

1 medical technology company. It is the exclusive licensee of substantially all rights
2 in United States Patent No. 5,560,360 (filed Mar. 8, 1993) (“the ‘360 patent”),
3 entitled “Image Neurography and Diffusion Anisotropy Imaging.” The ‘360 patent
4 describes techniques of generating nerve images using MRI equipment.
5

6 GE has filed this declaratory suit against NeuroGrafix. GE seeks declarations of
7 invalidity and non-infringement for the ‘360 patent. It also seeks a declaration that
8 its customers do not infringe. NeuroGrafix has moved to dismiss this complaint for
9 lack of subject matter jurisdiction, arguing that no justiciable controversy exists for
10 Claims 1-53 and 55-63 of the ‘360 patent.
11

12 Based on NeuroGrafix’s course of conduct, including its public
13 communications and history of enforcing the ‘360 patent, the Court finds that a
14 justiciable controversy exists with respect to all claims of the ‘360 patent.
15

16 NeuroGrafix’s dismissal motion is denied.
17

18 **II. Legal Principles of Declaratory Judgment Jurisdiction**

19 This Court can only hear cases or controversies. U.S. CONST. art. III, § 2. The
20 Declaratory Judgment Act authorizes this Court to issue judicial declarations as a
21 remedy, 28 U.S.C. § 2201 (a) (2006), but only where a justiciable controversy
22 exists. A justiciable controversy exists where alleged facts, under *all*
23 *circumstances*, show a substantial controversy between parties having adverse
24 legal interests of sufficient immediacy and reality. *See MedImmune, Inc. v.*
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1 *Genentech, Inc.*, 549 U.S. 118, 127 (2007) (emphasis added) (“all-circumstances
 2 standard”). The declaratory plaintiff bears the burden of proving that a justiciable
 3 controversy existed when the action was filed and has continued since. *Benitec*
 4 *Austl., Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340, 1344 (Fed. Cir. 2007).

6 The declaratory plaintiff must show an injury-in-fact fairly traceable to the
 7 defendant. *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1338 (Fed. Cir.
 8 2008). In patent cases, the alleged injury-in-fact in most justiciable controversies is
 9 a restraint on the free exploitation of non-infringing goods or an imminent threat of
 10 such restraint. *Id.* at 1339 (citations omitted). To prove this injury, the declaratory
 11 plaintiff is neither required to nor precluded from showing a reasonable
 12 apprehension of suit. *See MedImmune*, 549 U.S. at 118 (no requirement of
 13 reasonable-apprehension-of-suit for declaratory jurisdiction); *Prasco*, 557 F.3d at
 14 1336 (proving reasonable-apprehension-of-suit is one of many ways to establish
 15 declaratory jurisdiction).¹

21 The Federal Circuit has applied *MedImmune*’s all-circumstances standard in a
 22 limited number of cases. *See Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.*, 563
 23 F.3d 1358 (Fed. Cir. 2009) (jurisdiction exists); *Micron Tech. v. MOSAID Techs.*,
 24 518 F.3d 897 (Fed. Cir. 2008) (same); *Prasco*, 557 F.3d at 1329 (no jurisdiction).
 25 No bright line rule governs. *MedImmune*, 549 U.S. at 127. “The analysis must be

27
 28 ¹ Before *MedImmune*, patentee-defendants won jurisdictional challenges when declaratory plaintiffs failed to meet the requirement of proving a reasonable apprehension of suit. *MedImmune* struck down this requirement, effectively converting it into an option for declaratory plaintiffs alleging an injury in fact.

1 calibrated to the particular facts of each case.” *Prasco*, 557 F.3d at 1336 (citation
2 omitted).

3 4 **III. Discussion**

5 All of the circumstances surrounding this case have created a justiciable
6 controversy between GE and NeuroGrafix. The controversy exists as to each claim
7 of the ‘360 patent. GE and NeuroGrafix have adverse legal interests. This Court
8 therefore has declaratory judgment jurisdiction in this matter. NeuroGrafix’s
9 dismissal motion is denied.
10
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12 **A. All of the Circumstances Create a Substantial Controversy in This Case**

13 NeuroGrafix’s implementation of its patent enforcement strategy has created a
14 sufficiently real, immediate, and substantial controversy with GE. The
15 circumstances particular to this case include: (1) NeuroGrafix’s threatening
16 statements, (2) NeuroGrafix’s aggressive patent enforcement history, (3) GE’s
17 mounting indemnification and indirect-infringement liabilities, and (4) the
18 inadequacy of NeuroGrafix’s covenant. All these circumstances create a
19 sufficiently real and immediate dispute between GE and NeuroGrafix, parties
20 having adverse legal interests. The Federal Circuit has identified justiciable
21 controversies under similar circumstances. Declaratory judgment jurisdiction is
22 proper.
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1. NeuroGrafix's Threatening Statements

NeuroGrafix's threatening statements contribute to the creation of an immediate, real, and substantial dispute with GE. A patentee's public statements confirming its intent to continue an aggressive litigation strategy can contribute to the creation of a justiciable controversy. *See Micron Tech. v. MOSAID Techs.*, 518 F.3d 897, 901 (Fed. Cir. 2008).

In *Micron*, MOSAID, the patentee, sent a warning letter to Micron, a leading chip manufacturer, strongly suggesting that Micron should license its technology. *Id.* at 899. Three similar letters followed over the next two years. *Id.* When the licensing strategy failed, MOSAID embarked on a serial patent litigation campaign against leaders of the chip manufacturing industry. *Id.* Each time it obtained a settlement from a chip maker, MOSAID issued a statement reiterating its intent to pursue its aggressive licensing strategy. *Id.*

In its 2005 annual report, MOSAID stated,

MOSAID believes that all companies which manufacture DRAM products . . . use MOSAID's patented circuit technology. With approximately half the DRAM industry now under license, it is clear that our remaining strategy is to license the remaining DRAM manufacturers. We will apply our strong IP portfolio and our significantly improved financial position in the **aggressive** pursuit of this objective.

Id. (citation omitted) (emphasis added).

In a conference call with analysts, MOSAID promised to be “unrelenting in the assertion of [its] patent portfolio.” *Id.* at 900. The Federal Circuit assigned significant weight to these threatening statements when deciding that a real, substantial, and imminent dispute existed between MOSAID and Micron, one of the not-yet-sued chip makers. *Id.*

Like MOSAID, NeuroGrafix first engaged in licensing discussions with GE. General Electric Company's Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction [hereinafter GE's Opp.], *Gen. Elec. Co. v. NeuroGrafix*, No. 12-cv-04586-MRP (C.D. Cal. filed Aug. 8, 2012) (ECF No. 23). When licensing failed, NeuroGrafix switched its strategy to litigation, publishing this statement on its website on November 23, 2011:

At this time, NeuroGrafix advises & reminds users of MR Neurography, Diffusion Tensor Imaging (DTI, HARDI, and Q-Ball), or Diffusion Subtraction Neurography that they may be infringing US Patent 5,560,360 . . . if neither they nor their manufacturer has a license. Please contact NeuroGrafix by email with any inquiries. There may be no license in place for users of MRI equipment from GE, Philips, Toshiba, or BrainLab. Patent infringement litigation between NeuroGrafix and the Regents of the University of California is ongoing in U.S. Federal District Court. Aaron Filler, MD, PhD, the CEO of NeuroGrafix says: “NeuroGrafix intends to continue to assert its patent rights against unlicensed infringers.”

GE's Opp. at 3.

The resemblance to MOSAID’s annual report statement is striking: (1) both statements identify respective infringing technologies (DRAM and neural

1 imaging); (2) both target unlicensed entities; and (3) both end with a warning shot
2 saying each means business. In one respect, NeuroGrafix's statement goes even
3 further than MOSAID's. While MOSAID did not identify its targets by name,
4 NeuroGrafix has publicly identified GE as an unlicensed supplier.
5

6 Two distinctions between this case and *Micron* are noteworthy. *First*,
7 MOSAID's litigation targets were only chip makers, not their customers. This
8 distinction is of no consequence given GE's mounting liabilities relating from its
9 indemnification agreements. *See infra* p. 11. *Second*, the Federal Circuit noted that
10 just one day after Micron filed its declaratory action in California, MOSAID turned
11 around and sued Micron in Texas. *Id.* at 901. This post-filing event is irrelevant for
12 the question of whether a justiciable controversy existed when Micron filed its
13 declaratory action, but it can show that the controversy continued after the filing.
14 *See Gaf Bldg. Mats. Corp. v. Elk Corp. of Dallas*, 90 F.3d 479, 483 (Fed. Cir.
15 1996) ("[L]ater events may not create jurisdiction where none existed at the time of
16 filing."); *Benitec*, 495 F.3d at 1344 ("The burden is on the party claiming
17 declaratory judgment jurisdiction to establish that such jurisdiction existed at the
18 time the claim for declaratory relief and that it has continued since.").

19 While NeuroGrafix has not responded to GE's declaratory suit by suing GE
20 in some other jurisdiction, it *has* targeted a string of GE's customers in various
21 jurisdictions, thus keeping the controversy alive. *See infra* Table 2.
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“[P]rior litigation is a circumstance to be considered” under the *MedImmune* all-circumstances test. *Innovative Therapies, Inc. v. Kinetic Concepts*, 599 F.3d 1377, 1382 (Fed. Cir. 2010); *see also Prasco*, 537 F.3d at 1341 (“Prior litigious conduct is one circumstance to be considered in assessing whether the totality of circumstances creates an actual controversy.”).

Date	Party	GE Claims As Customer?	Identified patent claims in complaint	Resolution
May '08	Oak Tree Medical Corporation 08-cv-02923 (C.D. Cal.)	No	None	"June 2009 – NeuroGrafix announces \$900,000 settlement in patent infringement action against Oak Tree Imaging of Pasadena." (posted on Jun. 1, 2009)
Mar. '10	Siemens Medical Solutions USA, Inc. 10-cv-01990 (C.D. Cal.)	No	None	"The NeuroGrafix patent litigation against Siemens was dismissed in November 2011 pursuant to a confidential Settlement Agreement and Mutual Release. Pursuant to that agreement, Siemens obtained a license for itself and its customers." (posted on Nov. 22, 2011)

1	Sep. '11	The Regents of the University of California 11-cv-07591 (C.D. Cal.)	Yes	None	Pending
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5 Table 1 shows NeuroGrafix's record of enforcing the '360 patent *before* GE
6 filed this declaratory judgment action on May 25, 2012. *See supra* Table 1.

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8 In May, 2008, NeuroGrafix sued Oak Tree Medical Corporation, a medical
9 imaging clinic. *NeuroGrafix v. Oak Tree Med. Corp.*, No. 08-cv-02923 (C.D. Cal.
10 May 5, 2008). The case settled. OAK TREE IMAGING SETTLEMENT ANNOUNCED,
11 <http://www.neurografix.com/2009/06/> (last visited Aug. 10, 2012). NeuroGrafix
12 broadcasted the settlement results on its website. *Id.* Next, in March 2010, it sued
13 Siemens, an MRI equipment manufacturer. *NeuroGrafix et al. v. Siemens Med.*
14 *Solutions USA, Inc. et al.*, No. 10-cv-01990 (C.D. Cal. Mar. 18, 2010). Then, on
15 November 23, 2011, NeuroGrafix published a list of *remaining* unlicensed MRI
16 manufacturers. NEUROGRAFIX STATEMENT ON US PATENT 5,560,360,
17 <http://www.neurografix.com/news/neurografix-statement-on-us-patent-5560360/>
18 (last visited Aug. 10, 2012). The list was short: GE, Brainlab, Toshiba, and Philips.
19 *Id.* Notably missing was Siemens. *Id.* But a reader of that list would immediately
20 see why Siemens was absent. Just one day earlier, on November 22, 2011,
21 NeuroGrafix broadcasted that Siemens had settled.² NEUROGRAFIX STATEMENT ON
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² NeuroGrafix did not post the results of the Siemens settlement because of a confidentiality agreement.

SIEMENS LITIGATION, <http://www.neurografix.com/news/neurografix-statement-on-siemens-litigation/> (last visited Aug. 10, 2012).

Both before and after NeuroGrafix warned GE and its customers on its website, GE watched NeuroGrafix embark on a sue-settle-warn-repeat cycle. NeuroGrafix has targeted MRI makers and their customers alike. This is analogous to Micron's predicament of having to watch, from the sidelines, as MOSAID sued chip-maker after chip-maker. *Micron*, 518 F.3d at 901 ("[A]fter receiving several threats itself, Micron watched MOSAID sue each of the other leading DRAM manufacturers.").

NeuroGrafix's litigious conduct leading up to May 25, 2012, i.e., the filing date of GE's declaratory suit, thus contributed to the creation of a justiciable controversy with GE, much like MOSAID's litigious conduct did in *Micron*.

NeuroGrafix's patent enforcement campaign has intensified since, confirming the controversy's continued existence.

Table 2. NeuroGrafix's patent enforcement record *after* GE filed declaratory action

Date	Party	GE Claims As Customer?	Identified patent claims in complaint	Resolution
Jun. '12	Philips Electronics et al. 12-cv-11065 (D. Mass.)	No	At least claims 1, 36, 51, 54	Pending
Jul. '12	Beth Israel Deaconess Medical Center, Inc. 12-cv-11274 (D.	Yes	At least claim 36	Pending

1		Mass.)			
2	Jul. '12	The Brigham and Women's Hospital, Inc. 12-cv-11275 (D. Mass.)	Yes	At least claim 36	Pending
3					
4	Jul. '12	Trustees of Boston University 12-cv-11276	No	At least claim 36	Pending
5					
6	Jul. '12	Trustees of Tufts College 12-cv-11277 (D. Mass.)	No	At least claim 36	Pending
7					
8					
9	Jul. '12	The Johns Hopkins University 12-cv-02181 (D. Md.)	Yes	At least claims 1 and 36	Pending
10					
11					
12	Aug. '12	The University of Chicago Medical Center 12-cv-06068 (N.D. Ill.)	No	At least claim 36	Pending
13					
14					
15	Aug. '12	Brainlab, Inc. 12-cv-06075 (N.D. Ill.)	No	At least claim 36	Pending
16					
17					

18

19 Table 2 shows that NeuroGrafix has intensified its patent enforcement

20 campaign, adding at least three more identified GE customers to its roster of patent

21 infringement defendants – in the *last month alone*. While this Court cannot

22 consider these lawsuits to determine if an actual controversy existed *at the time* GE

23 filed this action, it *can* consider these suits to establish its continued existence.

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3. GE's mounting indemnification and indirect-infringement liabilities

In its capacity as a targeted supplier, GE's mounting indemnification and indirect-infringement liabilities furnish a significant consideration in weighing whether a justiciable controversy exists.

Indemnification and indirect-infringement liabilities are important considerations under *MedImmune's* "all circumstances" test. *See ABB Inc. v. Cooper Indus., LLC*, 635 F.3d 1346 (Fed. Cir. 2011). In *ABB*, the patentee, Cooper, licensed its technology to ABB ("the Cooper-ABB license"). 635 F.3d at 1346. ABB, in turn, contracted with a third party, Dow Chemicals, to manufacture the patented material. *Id.* at 1347. ABB also indemnified Dow against claims of infringement by Cooper. *Id.* Finding that Dow's activity violated the Cooper-ABB license, Cooper wrote threatening letters to both ABB and Dow. *Id.* It warned ABB of breach-of-contract liability, and Dow of patent-infringement liability. *Id.* Specifically, Cooper wrote to Dow, "We wish to formally put Dow on notice that Cooper will vigorously defend its rights should Dow attempt to make products covered by one or more of Cooper's patents." *Id.* (citation omitted).

ABB filed a declaratory judgment action against Cooper, seeking a declaration of non-infringement. *Id.* The lower court dismissed ABB's complaint for lack of subject matter jurisdiction. *Id.* The Federal Circuit reversed this dismissal on appeal, holding that all the circumstances supported the determination of a

1 justiciable controversy between ABB and Cooper. *Id.* at 1346. In *ABB*, the Federal
2 Circuit assigned primary weight to the role of Cooper's threatening statements in
3 creating a substantial, immediate, and real controversy surrounding infringement.
4 *Id.* at 1349 (considering parallels between Cooper's threatening statements and
5 those in *Micron Tech., Inc. v. Mosaid Techs., Inc.*, 518 F.3d 897, 899-901 (Fed.
6 Cir. 2008)). In its jurisdictional analysis, the Court considered ABB's "*interest* in
7 determining whether it would be liable for *indemnification*, which turned on
8 whether Dow would be liable for infringement." *Id.*

9 *ABB* is analogous. In *ABB*, Cooper sued Dow, an ABB customer, thereby
10 triggering indemnification considerations. 635 F.3d at 1347. Here, NeuroGrafix
11 sued UC, a GE customer, thereby triggering indemnification considerations. GE's
12 Opp. at 6. ABB then filed a declaratory action against Cooper, just like GE did
13 against NeuroGrafix. The Federal Circuit found that ABB had a legal interest in
14 determining its indemnification liabilities; GE has a legal interest in the same.
15 Cooper's threatening statements in *ABB*, the primary basis for the Federal Circuit's
16 finding of jurisdiction, are analogous to NeuroGrafix's threatening statements on
17 its website. 635 F.3d at 1345.

18 Each time NeuroGrafix sues a GE customer for patent infringement, GE faces
19 the imminent, substantial, and real threat of contractual (indemnification) liability.
20 *Before* GE filed this declaratory action, NeuroGrafix had sued UC (a GE

1 customer), thereby implicating GE's indemnification interests. The UC lawsuit
2 therefore contributed to the creation of a justiciable controversy with GE. *Since*
3 *then*, NeuroGrafix has sued at least at least three more GE customers, thereby
4 continuing to implicate GE's contractual indemnification liabilities with each
5 lawsuit, effectively keeping the justiciable controversy alive.
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8 The Court is not persuaded by GE's broad interpretation of this statement in
9 *Arris* for its argument on the indemnification issue:

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11 *We have recognized* that, where a patent holder accuses customers of
12 direct infringement based on the sale or use of a supplier's equipment,
13 the supplier has standing to commence a declaratory judgment action
14 if . . . the supplier is obligated to indemnify its customers from
infringement liability.

15 639 F.3d at 1368 (citing *ABB, Inc.*, 635 F.3d at 1346) (emphasis added); *see* GE
16 Opp. at 1.

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18 For two reasons, the above statement is not a *per se* rule (as GE characterizes it)
19 vesting standing in all suppliers *whenever* an *indemnified* customer is sued. *First*,
20 the Federal Circuit declared in *Arris* that it was "not reach[ing] the indemnification
21 issue." 639 F.3d at 1375. *Second*, the Federal Circuit cited *ABB*, where jurisdiction
22 obtained based *primarily* on the patentee's threatening communications. 635 F.3d
23 at 1346. The supplier's indemnification liability played a decidedly lesser role in
24 that decision. *Id.* (mentioning indemnification liability only when discussing
25 presence of adverse legal "interests" between patentee and supplier and focusing
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1 on threatening statements). Consistent with *MedImmune*, the Federal Circuit
2 reviewed *all* the circumstances in *ABB*, placing greater reliance on the patentee's
3 threatening communications and accounting for additional considerations including
4 the supplier's indirect infringement and indemnification liability.
5

6 The Court is likewise not persuaded by NeuroGrafix's argument that "[a] suit
7 filed against a different party, even if [the declaratory plaintiff] could potentially be
8 required to indemnify that party, is not a suit that [the declaratory plaintiff] itself
9 faces." *Id.* (quoting *Intellectual Prop. Dev. v. TCI Cablevision of California, Inc.*,
10 248 F.3d 1333 (Fed. Cir. 2001)). This is less of an argument and more of an out-of-
11 context soundbyte. In *Intellectual Property*, the Federal Circuit made the quoted
12 statement *in the context* of applying the now-defunct **part one** of its two-part
13 declaratory judgment jurisdiction test. *Intellectual Property*, 248 F.3d at 1341
14 ("[P]art one of the declaratory justiciability test for patent rights requires action by
15 the patent owner that creates 'reasonable apprehension' on part of the declaratory
16 plaintiff that it will face an infringement suit."). The Supreme Court, in
17 *MedImmune*, **struck down part one** of the Federal Circuit's two-part test. 549
18 U.S. at 132 n.11.
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25 **4. The inadequacy and ambiguity of NeuroGrafix's covenant not to sue**

26 NeuroGrafix's covenant is both inadequate and ambiguous, thus failing to moot
27 the actual controversy in this case. It is ambiguous because reasonable minds could
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disagree about whether the covenant allows NeuroGrafix to sue GE for future sales of previously-manufactured products. It is inadequate because given NeuroGrafix's course of conduct in this case, its failure to cover GE's customers leaves GE still exposed to very substantial and real indemnification liability.

"Whether a covenant not to sue will divest the trial court of jurisdiction depends on what is covered by the covenant." *Revolution Eyewear v. Aspex Eyewear, Inc.*, 556 F.3d 1294, 1297 (Fed. Cir. 2009). The *Revolution Eyewear* non-suit covenant did not cover the plaintiff's future sales of previously-sold products. *Id.* at 1298. This lapse in coverage rendered the covenant non-divesting, i.e., the court retained jurisdiction. *Id.* The Federal Circuit contrasted this covenant with a divesting covenant from a previous case. *Id.* at 1298 (distinguishing instant covenant from the covenant in *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054 (Fed. Cir. 1995)). The *Super Sack* covenant covered future production and sales of the same products that were the subject of the infringement suit. 57 F.3d at 1057.

Super Sack predates *MedImmune*, rendering its analysis³ suspect. Compare *Super Sack*, 57 F.3d at 1054 (decided by the Federal Circuit in 1995) with *MedImmune*, 549 U.S. 118 (decided by Supreme Court in 2007). Tellingly, *Super Sack*'s analysis of the covenant not to sue culminated in a conclusion that the

³ Neither the Supreme Court in *MedImmune* nor the Federal Circuit in subsequent cases has overruled *Super Sack*. Thus, while its analysis is suspect, its holding is not. See *Dow Jones & Co., Inc. v. Abblaise Ltd.*, 606 F.3d 1338, 1348 (Fed. Cir. 2010) (describing the Federal Circuit's covenant-not-to-sue jurisprudence as "established by *Super Sack* and continuing, post-*MedImmune*, through *Revolution Eyewear*").

1 declaratory plaintiff failed to meet the *requirement* of a reasonable apprehension of
2 suit, thereby eliminating jurisdiction. 57 F.3d at 1054. The Supreme Court in
3 *MedImmune* struck down this “requirement” as inconsistent with precedent and
4 replaced it with a totality-of-circumstances standard. 549 U.S. at 132 n.11. Now,
5 other circumstances in a particular case could *undo* a *Super Sack*-type covenant’s
6 jurisdiction-divesting effects. In other words, where a *Super Sack*-type covenant
7 might well negate the immediacy and reality of a controversy, other circumstances
8 in a particular case might serve to reinvigorate the dispute.

9 Finally, “a patentee’s grant of a covenant not to sue a supplier for infringement
10 *can* eliminate the supplier’s standing to bring a declaratory judgment action.”
11 *Arris*, 639 F.3d at 1380 (emphasis added). But a covenant’s failure to cover a
12 supplier’s customers may render it non-divesting, resulting in a finding of
13 jurisdiction. *See Monolithic Power Sys., Inc. v. O2 Micro Int’l*, 2008 WL 3266647
14 (N.D. Cal. Aug. 6, 2008) (denying dismissal motion and finding jurisdiction where
15 covenant did not cover customers). This is particularly so where the patentee has a
16 history of suing the declaratory plaintiff’s customers. *See Bendix Commercial*
17 *Vehicle Sys. LLC v. Haldex Brake Prods. Corp.*, 2010 WL 3221972 (N.D. Ohio
18 Aug. 13, 2010) (highlighting how a suit against customers is more than a
19 theoretical possibility where the patentee has a history of suing customers).

1 *Revolution Eyewear* requires this Court to analyze what a covenant covers. 556
2 F.3d at 1297 (“Whether a covenant not to sue will divest the trial court of
3 jurisdiction depends on what is covered by the covenant.”) The covenant in this
4 case is: “NeuroGrafix has no intentions of suing and will not sue GE for
5 infringement of these claims based on GE’s manufacture, importation, use, sale
6 and/or offer for sale of GE’s past and current products.” NeuroGrafix’s Mot. to
7 Dismiss at 3.

8 NeuroGrafix’s covenant is somewhat *ambiguous* because reasonable minds
9 could reach different conclusions about whether the covenant covers future sales of
10 existing products – rendering it analogous to the *Revolution Eyewear* covenant and
11 distinguishable from the *Super Sack* covenant. 556 F.3d at 1297. On its face, the
12 covenant also fails to insure GE against the risk of indirect infringement liability.
13 NeuroGrafix has clarified, in its reply brief, that the covenant *does* include GE’s
14 potential indirect infringement liability. Defendant’s Reply in Support of
15 Defendant’s Motion to Dismiss, ECF No. 27 at 4. But even so, the covenant is
16 ambiguous about indirect infringement liability stemming from future sales of
17 previously-sold products. This ambiguity regarding the covenant’s coverage
18 renders it analogous to the deficient *Revolution Eyewear* covenant and
19 distinguishable from the sufficient *Super Sack* covenant.
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1 Aside from being *ambiguous*, the covenant is also *inadequate* **in this case** for
2 failing to cover GE's customers. In making this observation, the Court does not
3 purport to lay down a general rule applicable to all covenants not to sue in supplier
4 cases such as this. But against the backdrop of *all the circumstances in this*
5 *particular case*, including (1) NeuroGrafix's statement putting GE and its
6 customers on notice; and (2) NeuroGrafix's aggressive serial litigation against
7 GE's customers, the covenant's failure to cover customers renders it inadequate to
8 divest this Court of jurisdiction.

12 As a logical matter, the scope of the covenant not to sue is relevant to the
13 *reasonableness* of a declaratory plaintiff's claimed apprehension of suit. Pre-
14 *MedImmune*, defendant-patentees could have secured dismissals by merely issuing
15 a covenant not to sue, thus frustrating the declaratory plaintiff's ability to meet the
16 Federal Circuit's reasonable-apprehension-of-suit *requirement*. *MedImmune* struck
17 down this *requirement*. 549 U.S. at 132 n.11. Now, a covenant not to sue is just
18 *one piece of the puzzle*. Pre-*MedImmune*, covenants may have trumped *all other*
19 *pieces of the puzzle*. *MedImmune* took away that veto power. The controversy-
20 creating effects of these *other* pieces could, taken together *in this case*, trump the
21 controversy-mitigating effects of the covenant – thereby rendering it inadequate.

26 Here, NeuroGrafix's own conduct has canceled out its proffered covenant's
27 controversy-mitigating effects. And where, as here, an ambiguous and inadequate
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1 covenant stands next to threatening statements backed up by subsequent serial
2 litigation, all circumstances point to the creation and continued existence of a
3 justiciable controversy.
4

5 **B. A Justiciable Controversy Exists as to all Claims of the ‘360 Patent**

6 In patent cases, the existence of a case or controversy must be evaluated on a
7 claim-by-claim basis. *Streck, Inc. v. Research & Diagnostic Sys.*, 665 F.3d 1269,
8 1281 (Fed. Cir. 2012). NeuroGrafix’s website statement fails to list specific claims.
9 Its subsequent complaints in various district courts are likewise directed to the
10 entire ‘360 patent. And where specific claim numbers are listed, they are
11 accompanied by hedges like “at least” – leaving the door open for more claims to
12 enter later stages of the litigation. *See supra* Table 2. GE indemnification
13 agreements leave it exposed to all claims of the ‘360 patent. NeuroGrafix’s
14 covenant is restricted to a subset of claims (“covenanted claims”), but is both
15 inadequate (no coverage for customers) and ambiguous (reasonable minds could
16 differ on whether future sales of existing products are covered).
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22 Thus, a justiciable controversy exists as to *all* claims of the ‘360 patent because
23 the factors giving rise to the controversy, i.e., threats, lawsuits, scope of
24 indemnification, apply to the entire ‘360 patent.
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1 C. GE and NeuroGrafix Have Adverse Legal Interests

2 GE and NeuroGrafix are parties having adverse legal interests stemming from
3 GE's indemnification agreement with UC.

4
5 For declaratory judgment jurisdiction to arise, *MedImmune* requires a
6 substantial controversy between *parties having adverse legal interests* of sufficient
7 immediacy and reality. 549 U.S. at 127 (emphasis added). "The concept of adverse
8 legal interests requires that there be a dispute as to a legal right" *Creative*
9 *Compounds, LLC v. Starmark Labs.*, 651 F.3d 1303, 1316 (Fed. Cir. 2011). "[A]n
10 economic interest *alone* . . . cannot form the basis of an 'actual controversy'"
11 *Id.* (citation omitted) (emphasis added). "[T]he purpose of the Declaratory
12 Judgment Act was to enable a person who is at *legal risk* because of an unresolved
13 dispute to obtain judicial resolution of that dispute without having to await the
14 commencement of a legal action by the patentee, to 'clear the air.'" *BP Chems.*
15 *Ltd. v. Union Carbide Corp.*, 4 F.3d 975, 977 (Fed. Cir. 1993) (emphasis added).

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21 *Creative Compounds*, a post-*MedImmune* case, featured a cast of actors similar
22 to this case – a patentee, a supplier, and a customer. 651 F.3d at 1316. The
23 patentee, Creative, had never accused the supplier, Starmark, of infringing its
24 patent. *Id.* Creative *had*, however, sent letters to Starmark's *customers* alleging
25 patent infringement. *Id.* Starmark did not have an indemnity agreement with its
26 customers. *Id.* The Federal Circuit held that "[i]n the **absence of an indemnity**
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1 **agreement** between Starmark and one of these ‘customers,’ Starmark has, at most,
2 only an economic interest in clarifying its customers’ rights under Creative’s
3 patents.” *Id.* (emphasis added). The implication of this statement is that the
4 **presence of an indemnity agreement** triggers a supplier’s legal interests in
5 clarifying its customers’ rights.

6
7 Another post-*MedImmune* Federal Circuit case confirms this implication. *See*
8 *ABB Inc. v. Copper Indus., LLC*, 635 F.3d 1345, 1349 (Fed. Cir. 2011). In *ABB*,
9 the Federal Circuit rested its jurisdictional finding primarily on the patentee’s
10 warning letters to the supplier and its indemnified customer. *Id.* When identifying
11 the parties’ adverse legal interests, the Federal Circuit stated, “[The supplier] **had**
12 **an interest** in determining whether it would incur liability . . . for
13 **indemnification**, which turned on whether [its customer] would be liable for
14 infringement.” *ABB*, 635 F.3d at 1349.

15
16 Thus, at least two post-*MedImmune* Federal Circuit cases have held that a
17 supplier of indemnified customers has a legal interest in “clarifying its customer’s
18 rights” (*Creative Compounds*) or “determining whether it would incur liability . . .
19 for indemnification” (*ABB*). 651 F.3d at 1316; 635 F.3d at 1349.

20
21 Pre-*MedImmune* cases on this point remain relevant because *MedImmune* only
22 rejected the Federal Circuit’s reasonable-apprehension-of-suit requirement, an
23 issue independent from whether the adverse interests between the parties are *legal*
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1 versus *purely economic*. One such pre-*MedImmune* Federal Circuit case featured a
2 supplier, its non-indemnified customer, and a patentee. *Microchip Tech. Inc. v.*
3 *Chamberlain Grp., Inc.*, 441 F.3d 936 (Fed. Cir. 2006). In *Microchip*, the patentee
4 had never accused the declaratory plaintiff of patent infringement. *Id.* at 943. The
5 Federal Circuit stated that “while [the supplier’s] customers may or may not have
6 had an ‘adverse legal interest’ or have been at ‘legal risk,’ they were not parties to
7 [the supplier’s declaratory] action.” *Id.* Noting that the declaratory plaintiff failed
8 to meet its burden to show an adverse legal interest, the Federal Circuit stated,
9 “Nor has [the supplier] established a **legal relationship** between it and a customer
10 that had a legal interest adverse to [the patentee], **such as the existence of an**
11 **indemnity agreement between [the supplier] and its customer.**” *Id.* (emphasis
12 added).

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18 *Microchip*, *ABB*, and *Creative Compounds*, all binding⁴ authority for this issue,
19 collectively hold that the following two parties have adverse *legal* interests: (1)
20 suppliers who indemnify their customers; and (2) patentees who threaten those
21 customers for patent infringement. Covenants not to sue which do not cover
22 customers are irrelevant to this analysis because they do not offer any
23 indemnification-related relief to the supplier, leaving it exposed to liability based
24 on indemnification.
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28 ⁴ At least one district court has also held, post-*MedImmune*, that suppliers and patentees have adverse legal interests where the patentee threatens an indemnified customer. See *WS Packaging Grp. v. Global Commerce Grp., LLC*, 2007 WL 205559 (E.D. Wisc. Jan. 24, 2007).

1 NeuroGrafix has sued UC for using GE's MRI machines. UC and NeuroGrafix
2 have adverse legal interests. GE has indemnified UC. Under *Microchip*, *ABB*, and
3 *Creative Compounds*, this Court recognizes GE's legal interests in (a) clarifying
4 UC's rights under the '360 patent and (b) determining whether it would incur
5 liability for indemnification, which turns on whether UC would be liable for
6 infringement. GE and NeuroGrafix do not have *purely economic* adverse interests
7 because GE has successfully established a legal relationship with UC. *Microchip*,
8 441 F.3d at 943 (indemnity agreement constitutes legal relationship between
9 supplier and customer, triggering supplier's legal interest in clarifying the
10 customer's rights with respect to the asserted patent).

11
12 NeuroGrafix argues that its covenant not to sue "eliminates any adverse legal
13 interest between a declaratory judgment plaintiff and defendant." NeuroGrafix's
14 Reply at 3. For support, NeuroGrafix relies on three Federal Circuit cases. *Id.* at 4.

15
16 *First*, NeuroGrafix cites *Super Sack*. *Id.* (citation omitted). For reasons
17 previously discussed, the Court does not find this citation persuasive. *See supra* p.
18 17-18. *Second*, NeuroGrafix cites *Intellectual Property Development*, 248 F.3d at
19 1342. Again, for reasons previously discussed, this is less of an argument and more
20 of an out-of-context Federal Circuit soundbyte. *See supra* p. 16.

21
22 *Third*, NeuroGrafix cites *Dow Jones & Company, Inc. v. Abblaise Ltd.*, 606 F.3d
23 1338 (Fed. Cir. 2010). In *Dow Jones*, the declaratory plaintiff protested that a
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1 controversy lingered despite the patentee's covenant not to sue because of the
2 covenant's failure to cover Dow's parent company, News Corp. *Id.* The Federal
3 Circuit noted that News Corp. was insulated from liability absent a piercing of the
4 corporate veil. Based on this insulation, the Court found that the covenant's failure
5 to cover News Corp. made no difference, and therefore no controversy remained in
6 existence.
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9 *Dow Jones* is distinguishable. The parent-subsidary relationship in *Dow Jones*
10 is not analogous to the supplier-customer relationship here. *There*, a corporate veil
11 shielded the parent, News Corp., thus *insulating* it from Dow Jones's infringement
12 liability. *Here*, an indemnification agreement exercised the opposite effect on the
13 supplier, GE, *exposing* rather than *insulating* it from UC's patent infringement
14 liability.
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17 For the above reasons, GE and NeuroGrafix are parties having adverse legal
18 interests.
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IV. CONCLUSION

Given NeuroGrafix's course of conduct and GE's mounting indemnification liabilities, the Court finds that a substantial, real, and immediate controversy exists between parties having adverse legal interests as to all claims of the '360 patent. NeuroGrafix's motion to dismiss is thus **DENIED**.

IT IS SO ORDERED.

DATED: August 16, 2012

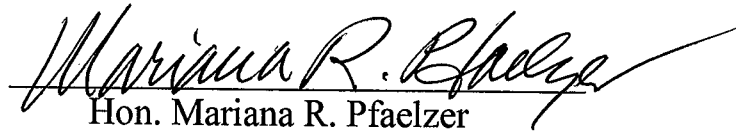

Hon. Mariana R. Pfaelzer
United States District Judge

Exhibit W

Link: 36

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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

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11 GENERAL ELECTRIC COMPANY,
12 Plaintiff,
13 v.
14 NEUROGRAFIX; NEUROGRAPHY
15 INSTITUTE MEDICAL
16 ASSOCIATES, INC.; IMAGE-
17 BASED SURGICENTER
18 CORPORATION; WASHINGTON
19 RESEARCH FOUNDATION,
20 Defendant.

Case No. 2:12-cv-04586-MRP

**Order Denying NeuroGrafix's
Motion to Reconsider the Court's
Finding that Declaratory Judgment
Jurisdiction Exists as to
Covenanted Claims 1-53 and 55-63**

21 **I. Introduction**

22 The declaratory judgment plaintiff, General Electric Company ("GE"), designs
23 and manufactures medical resonance imaging ("MRI") machines and makes
24 associated software. GE sells these MRI products to universities and hospitals.
25 Pursuant to indemnification agreements, GE is obligated to compensate customers
26 if they incur patent infringement liability resulting from their use of GE's products.
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1 The declaratory judgment defendant, NeuroGrafix, is the exclusive licensee of a
2 medical imaging patent – U.S. Patent No. 5,560,360 (filed Mar. 8, 1993) (“the ‘360
3 patent”), entitled “Image Neurography and Diffusion Anisotropy.” In the last year
4 alone, NeuroGrafix has sued four GE customers for infringing the ‘360 patent. But
5 it has never directly sued GE. In fact, for a subset of claims in the ‘360 patent,
6 NeuroGrafix has issued a covenant *not* to sue GE for direct or indirect
7 infringement for past, present, or future sales of its past or present MRI products.
8 The covenant does not, however, cover GE’s customers. Although NeuroGrafix’s
9 covenant removes indirect infringement liability from the equation, the specter of
10 indemnification liability continues to loom over GE in light of NeuroGrafix’s serial
11 litigation against GE’s customers.

12 GE filed this lawsuit against NeuroGrafix, seeking judicial declarations that the
13 ‘360 patent is invalid and not infringed by GE or its customers. NeuroGrafix
14 previously moved the Court to dismiss GE’s complaint for lack of subject matter
15 jurisdiction. The Court denied this motion because: (1) all the circumstances in this
16 case created a substantial controversy between GE and NeuroGrafix; and (2) GE
17 and NeuroGrafix have adverse legal interests.

18 Here, NeuroGrafix moves the Court to reconsider its jurisdictional finding. The
19 Court has reconsidered its prior decision and again finds that declaratory judgment
20 jurisdiction exists in this case.

II. The Court's Previous Jurisdictional Finding

For declaratory judgment jurisdiction to exist, (1) all the circumstances in a case must create a substantial controversy (2) between parties having adverse legal interests. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

In finding a substantial controversy between GE and NeuroGrafix, the Court previously assessed the following circumstances: (1) NeuroGrafix's threatening statements on its website warning GE's customers that GE's products infringe the '360 patent; (2) NeuroGrafix's pre-filing¹ patent enforcement record; (3) NeuroGrafix's post-filing patent enforcement record; (4) NeuroGrafix's covenant not to sue failed to cover customers, implicating GE's indemnification liabilities; and (5) the covenant was somewhat ambiguous about whether it covered GE's future sales of previously sold products, implicating GE's indirect infringement liabilities. ECF No. 31. The Court found that these circumstances, taken together, created a substantial controversy between NeuroGrafix and GE. *Id.*

The Court also found that GE and NeuroGrafix have adverse legal interests stemming from GE's mounting indemnification liabilities to its customers. The Court relied on guidance from various Federal Circuit cases identifying a supplier's interest in clarifying its indemnification liabilities, which turned on

¹ "Pre-filing" refers to the time before GE filed its declaratory judgment suit. The Court cannot consider post-filing events to determine the existence of a substantial controversy in the first instance. Post-filing events can, however, factor into the Court's evaluation of the *continued existence* of the controversy. *Benitec Austl., Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340, 1344 (Fed. Cir. 2007).

1 invalidity and noninfringement of the patentee's patent, as an eligible "adverse
2 legal interest" in the context of declaratory judgment jurisdiction.

3 Based on these findings, the Court denied NeuroGrafix's motion to dismiss
4 GE's complaint for lack of subject matter jurisdiction.

6 **III. NeuroGrafix's Reconsideration Motion**

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8 NeuroGrafix makes two primary arguments in its reconsideration motion.
9 Defendant's Motion for Reconsideration, ECF No. 36 [hereinafter "Mot."]. *First*,
10 NeuroGrafix argues that the covenant it offers GE is not ambiguous and covers
11 GE's future sales of previously sold products. Mot. at 1. There is, therefore, no
12 actual controversy between the parties. *Second*, NeuroGrafix also advances what
13 the Court calls the cause-of-action theory. Mot. at 10-11. This theory predicates
14 declaratory judgment jurisdiction on the existence and identification of a cause of
15 action or hypothetical complaint that the declaratory judgment defendant ("DJ
16 defendant") could have brought against the declaratory judgment plaintiff ("DJ
17 plaintiff"). Because NeuroGrafix can no longer, in light of its covenant not to sue,
18 bring any cause of action or hypothetical complaint against GE, it is argued that the
19 parties lack adverse legal interests under the cause-of-action theory. *Id.*

24 **IV. Discussion**

25
26 The Court has reconsidered its previous jurisdictional finding. Though the
27 analysis is slightly altered due to NeuroGrafix's clarification of the scope of its
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1 covenant, the conclusion remains the same. All the circumstances in this case
2 continue to create a substantial controversy between NeuroGrafix and GE.
3 NeuroGrafix and GE are still parties having adverse *legal* interests. The Court
4 addresses NeuroGrafix's reconsideration arguments in turn.

5
6 **1. Although NeuroGrafix has resolved the Court's concern regarding the**
7 **covenant's ambiguity, the remaining circumstances in this case still**
8 **create a substantial controversy between GE and NeuroGrafix**

9 As stated, in finding a substantial controversy between GE and NeuroGrafix,
10 the Court previously assessed *all* of the following circumstances: (1)
11 NeuroGrafix's threatening statements on its website warning GE's customers; (2)
12 NeuroGrafix's pre-filing patent enforcement record; (3) NeuroGrafix's post-filing
13 patent enforcement record; (4) NeuroGrafix's covenant not to sue failed to cover
14 customers; and (5) the covenant was somewhat ambiguous about whether it
15 covered GE's future sales of previously sold products. ECF No. 31 at 4.
16 NeuroGrafix's reconsideration motion only addresses one of these five points, i.e.,
17 the covenant's ambiguity about whether it covered GE's future sales of previously
18 sold products. Mot. at 2 n.1.

19 NeuroGrafix protests that the Court has self-supplied an incorrect answer to its
20 own *new* question regarding the covenant's ambiguity. Mot. at 3. The Court's
21 inquiry regarding the scope of the covenant is not a new question; it has been
22 considered before by the Federal Circuit. "Whether a covenant not to sue will
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Revolution Eyewear v. Aspex Eyewear, Inc., 556 F.3d 1294, 1297 (Fed. Cir. 2009).

On this topic, NeuroGrafix states, “Had Plaintiff or the Court previously questioned the inclusive scope of Defendant’s covenant, Defendants *would have* answered and affirmed, as they now answer and affirm, that their covenant is all encompassing and not ambiguous.” Mot. at 1. The Court has a duty, under *Revolution Eyewear*, to evaluate the jurisdiction-divesting effects of a patentee’s covenant not to sue by deriving a measure of its coverage. 556 F.3d at 1297. It has no duty to ask the plaintiff to affirm that there is no defect in the covenant. In any event, NeuroGrafix’s protest is now moot because it has already clarified, in its reconsideration motion, that its covenant not to sue covers GE’s future sales of previously sold products. Mot. at 2 n.1.

But NeuroGrafix’s clarification does not resolve the question of the covenant’s jurisdiction-divesting effects. To be sure, it relieves GE of the prospect of indirect infringement liability. But the specter of indemnification liability to its customers continues to loom over GE as NeuroGrafix methodically sues one GE customer after another. NeuroGrafix’s argument has only decreased the number of circumstances considered in the all-circumstances analysis from five to four.

The four surviving circumstances, *taken together*, suffice to create a substantial controversy between the parties: (1) NeuroGrafix's threatening public statements

1 on its website naming GE as an unlicensed supplier; (2) NeuroGrafix's pre-filing
2 patent enforcement record; (3) NeuroGrafix's post-filing patent enforcement
3 record; and (4) the covenant's failure to cover GE's customers, implicating GE's
4 indemnification liabilities. Where GE previously faced two types of legal liability
5 (indemnification and indirect infringement) due to NeuroGrafix's serial litigation,
6 it now faces just one – indemnification. Obviously, a substantial controversy still
7 remains.
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10 The Court does not purport to set down any rule that a substantial controversy
11 exists *whenever* a patentee's covenant not to sue fails to cover a supplier's
12 indemnified customers. The Court's finding of a substantial controversy is both
13 limited to and informed by *the particular combination of four circumstances in*
14 *this case*. Whether this substantial controversy affects the parties' *adverse legal*
15 *interests* is a more complicated issue, one the Court is also obligated to consider.
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19 **2. Although NeuroGrafix's covenant not to sue has foreclosed any cause of**
20 **action it could bring against GE, the parties still have adverse *legal***
21 **interests**

22 NeuroGrafix's reconsideration motion raises an important question: Can a
23 supplier and a patentee have *adverse legal interests* for purposes of declaratory
24 judgment jurisdiction, even after the patentee grants an unambiguous covenant not
25 to sue the supplier for direct or indirect infringement for past, present, and future
26 sales of its past and present products? Where, as here, the supplier has indemnified
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1 customers whom the covenant fails to cover, and the patentee has sued those
2 indemnified customers – thereby leaving the supplier exposed to mounting
3 indemnification liabilities – the answer is yes. Such a supplier does have adverse
4 legal interests vis-à-vis such a patentee, even though the patentee could not
5 (pursuant to the covenant) bring *any* cause of action whatsoever against the
6 supplier. This conclusion finds support in decisions by both the Supreme Court and
7 the Federal Circuit.

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10 NeuroGrafix’s whole argument *is* its “cause-of-action theory.” Mot. at 10-15.
11 Again, this theory predicates declaratory judgment jurisdiction upon the existence
12 and identification of a cause of action or hypothetical complaint that the
13 declaratory judgment defendant could potentially bring against the declaratory
14 judgment plaintiff. Absent such hypothetical cause of action, the theory goes, no
15 adverse legal interests exist. Consequently, no declaratory judgment jurisdiction
16 exists. To quote NeuroGrafix, “This bears repeated emphasis: Defendants do not
17 have adverse legal interests regarding the Covenanted Claims because there is no
18 underlying cause of action, hypothetical complaint, or coercive action that
19 Defendants may actually or potentially bring against Plaintiff regarding the
20 Covenanted Claims.” *Id.* at 10-11.

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22 As if to confirm this theory, NeuroGrafix cites the Federal Circuit, “[F]or
23 declaratory judgment suits, the character of the action [requisite actual Article III
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1 case or controversy] is *judged based on the declaratory judgment defendant's*
2 *hypothetical complaint.*” Mot. at 10 (citing *ABB Inc. v. Cooper Indus., LLC*, 635
3 F.3d 1345, 1350-51 (Fed. Cir. 2011)). “[J]udged based on . . . hypothetical
4 complaint” is hardly a proclamation of a jurisdictional *requirement*. Identifying a
5 cause of action that the DJ defendant could potentially bring against the DJ
6 plaintiff is *indeed* a common way of proving adverse legal interests, but the Court
7 does not accept NeuroGrafix’s elevation of this showing to the status of a
8 jurisdictional requirement.

12 *Arris Group, Inc. v. British Telecommunications PLC*, a post-ABB Federal
13 Circuit case, furnishes guidance on this point. 639 F.3d 1368 (Fed. Cir. 2011).
14 There, the Federal Circuit stated in a footnote, “A controversy as to a legal right
15 may also arise in some cases where the declaratory defendant ***has no cause of***
16 ***action.***” 639 F.3d 1368, 1374 n.4 (Fed. Cir. 2011) (emphasis added). To be sure,
17 the Federal Circuit did state in *Arris* that an adverse legal interest requires a dispute
18 as to a legal right – “***for example***, an underlying legal cause of action that the
19 declaratory defendant could have brought or threatened to bring.” *Id.* at 1374. The
20 Federal Circuit’s choice of the phrase “for example” indicates that the cause-of-
21 action showing is an exemplar, i.e., *just one way*, to satisfy the adverse-legal-
22 interests requirement.

1 NeuroGrafix claims that no decision by the Supreme Court or Federal Circuit
2 holds that Article III or the Declaratory Judgment Act may be expanded to permit a
3 declaratory judgment case where the declaratory judgment plaintiff cannot be
4 liable to the declaratory judgment defendant. Mot. at 11. This is incorrect.

5
6 **A. The Supreme Court and the Federal Circuit have both previously found**
7 **declaratory judgment jurisdiction where the DJ defendant could not**
8 **bring any hypothetical complaint or cause of action against the DJ**
9 **plaintiff**

10 The Supreme Court and the Federal Circuit have both previously found
11 declaratory judgment jurisdiction in the absence of any underlying cause of action
12 that the declaratory judgment defendant could have brought against the plaintiff at
13 the time of the jurisdictional finding. The cases are: (1) *Maryland Casualty Co. v.*
14 *Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); and (2) *Caraco Pharmaceutical*
15 *Laboratories, Ltd. v. Forest Laboratories, Inc.*, 527 F.3d 1278 (Fed. Cir. 2008).
16
17 The Court discusses each in turn.

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20 **i. Supreme Court: *Maryland Casualty***

21 In *MedImmune*, the Supreme Court discussed its own previous holdings on the
22 issue of declaratory judgment jurisdiction. 549 U.S. 118, 132 n.11. Among other
23 cases, the Court cited *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S.
24 270 (1941). *Id.* *Maryland Casualty* involved an automobile insurance policy
25 between an insurance company (“the insurer”) and a private entity (“the insured”).
26
27 *Id.* at 271. Under the policy, the insurer had agreed to indemnify the insured for
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1 any automobile-accident-related liabilities it might be required to pay third parties,
2 so long as the automobile driven by the insured during the accident was “hired by
3 the insured.” *Id.* While the policy was in force, the insured was involved in an
4 automobile accident with a third party (“the victim”). The victim sued the insured
5 to recover damages resulting from injuries sustained in the collision. *Id.* The
6 insurer then filed a declaratory judgment suit against the victim and the insured,
7 seeking a decree that the truck driven by the insured during the accident was not
8 “hired by the insured.” *Id.* at 272.

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12 The Supreme Court first stated that declaratory judgment jurisdiction required
13 “parties having adverse legal interests.” *Id.* at 273. The court then found that
14 declaratory judgment jurisdiction existed in the dispute between the insurer and the
15 victim. *Id.* at 274. By so holding, the Court implicitly held that the insurer and the
16 victim had adverse legal interests. Any other conclusion forces the inference that
17 the Court granted declaratory judgment jurisdiction in a case featuring parties
18 without adverse legal interests. Because that cannot be, the victim and the insurer
19 were parties having adverse legal interests.

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23 Under NeuroGrafix’s cause-of-action theory, the victim in *Maryland Casualty*
24 must have had *some* cause of action or hypothetical complaint it could have
25 brought against the insurer at the time of the jurisdictional finding. But that was not
26 so. In fact, governing state law only allowed the victim to sue the insurer if two
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1 triggering events had already occurred: (1) the victim had obtained a final
2 judgment against the insured; and (2) the insured had failed to satisfy the judgment
3 within thirty days after its rendition. *Id.* at 273 (citing sections 9510-3 and 9510-4
4 of the Ohio Code). At the time of the jurisdictional finding, neither triggering event
5 had occurred. *Id.* at 271 (“Apparently this action [between the victim and the
6 insured] had not proceeded to judgment.”). *Maryland Casualty*’s jurisdictional
7 finding notwithstanding the absence of any cause of action that the DJ defendant
8 could have brought against the DJ plaintiff therefore undermines NeuroGrafix’s
9 cause-of-action theory.
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13 **ii. Federal Circuit: *Caraco***
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15 In *Caraco Pharmaceutical Laboratories, Ltd. v. Forest Laboratories, Inc.*, the
16 Federal Circuit granted declaratory judgment jurisdiction although the DJ
17 defendant could not bring any cause of action or hypothetical complaint against the
18 DJ plaintiff (due to a covenant not to sue). 527 F.3d 1278 (Fed. Cir. 2008). In
19 addition to *Maryland Casualty*, *Caraco* independently invalidates NeuroGrafix’s
20 cause-of-action theory.
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23 *Caraco* featured a Hatch-Waxman dispute. *Id.* Under the Hatch-Waxman
24 framework, the FDA can only approve an ANDA filer’s generic drugs if: (1) the
25 NDA-holder’s Orange Book listed patents have expired; or (2) the ANDA filer has
26 obtained a judgment of noninfringement or invalidity against the Orange Book
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1 listed patents. *See id.* at 1282-83. In *Caraco*, an NDA holder granted a covenant
2 not to sue an ANDA filer. *Id.* at 1282. The ANDA filer brought a declaratory
3 judgment suit against the NDA holder. *Id.* at 1288. The lower court held that no
4 declaratory judgment jurisdiction existed based on the DJ defendant-patentee's
5 covenant not to sue. *Id.* at 1289-90. The Federal Circuit reversed, stating:

8 Clearly, in the *ordinary infringement context* . . . a covenant not to
9 sue allows the recipient to enter the marketplace. Indeed, a covenant
10 not to sue on a patent ensures that the covenant's recipient will not be
11 liable for damages or subject to an injunction for infringement of that
12 patent. However, in the Hatch-Waxman context, regardless of a
13 covenant not to sue, a generic drug manufacturer cannot enter the
14 market without FDA approval.

15 *Id.* at 1296 (emphasis added).

16 The Federal Circuit has pointed to an important consideration applicable here.
17 An “ordinary infringement context” features only two entities: (1) patentee; and (2)
18 rival. A rival entering the market without a judgment of invalidity or
19 noninfringement against the patentee's patent faces only one source of potential
20 patent infringement liability – that owed to the patentee. A covenant not to sue, in
21 this “ordinary infringement context,” effectively clears the path for the rival's
22 market entry and participation because it relieves the recipient of his only specter
23 of liability – that arising out of its obligation not to engage in willful patent
24 infringement.
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1 By contrast, the Hatch-Waxman scenario features a triangle of entities: (1)
2 NDA holder (DJ plaintiff); (2) FDA (third party); and (3) ANDA filer (DJ
3 plaintiff). To get FDA approval, an ANDA filer must first secure judgments of
4 noninfringement or invalidity against the NDA holder's Orange-Book-listed
5 patents. *Id.* at 1282-83. To avoid FDA-enforcement liability for selling unapproved
6 drugs, the ANDA filer must therefore *first* secure such judgments. *Id.* at 1287. An
7 ANDA filer entering the market without a judgment of invalidity or
8 noninfringement against the NDA holder's patents faces not one (as in the ordinary
9 infringement context) but *two* specters of liability: (1) patent infringement liability
10 to the NDA holder; and (2) liability to the general public (whom the FDA
11 represents) for selling drugs unapproved by the FDA. In this unique scenario, the
12 NDA holder's covenant not to sue only relieves the ANDA filer of the first type of
13 liability, i.e., patent infringement liability to the NDA holder.

14 This case is analogous to *Caraco*. The *Caraco* triangle featured: (1) NDA
15 holder-patentee (first source of potential liability); (2) FDA (second source of
16 potential liability); and (3) the ANDA filer. The instant triangle features: (1)
17 NeuroGrafix (first source of potential liability); (2) GE's customers sued by
18 NeuroGrafix (second source of potential liability); and (3) GE. The *Caraco*
19 covenant failed to relieve the ANDA filer (DJ plaintiff) from the second source of
20 liability, i.e., FDA enforcement against unapproved products, and thus failed to

1 divest declaratory judgment jurisdiction. *Id.* at 1297. Likewise, NeuroGrafix's
2 covenant fails to relieve GE from the second source of liability, i.e.
3 indemnification to those customers whom NeuroGrafix has sued for patent
4 infringement. In *Caraco*, the NDA holder (DJ defendant)'s inability to bring any
5 cause of action against the ANDA filer (DJ plaintiff) did not preclude the Federal
6 Circuit's finding that they were parties having adverse legal interests. *Id.* at 1297.
7
8 Likewise, NeuroGrafix's inability to bring any cause of action against GE does not
9 preclude a finding that NeuroGrafix and GE have adverse legal interests.
10

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12 The specter of FDA liability looming over Caraco had its roots in: (1) the NDA
13 holder's Orange Book listed patents and (2) the NDA holder's covenant which was
14 a tactic designed to forestall the market entry of ANDA filers. *Id.* at 1285
15 (describing NDA holder's gamesmanship). This obstacle on the road to FDA
16 approval threatened Caraco's market entry and created Caraco's *legal* interest in
17 clarifying its rights vis-à-vis the NDA holder's Orange-Book-listed patents. *Id.* at
18 1297. This legal interest was, for obvious reasons, adverse to the NDA holder, i.e.,
19 the owner of the patents.
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23 Likewise, the specter of indemnification liability looming over GE has its roots
24 in: (1) the '360 patent; and (2) NeuroGrafix's covenant designed to forestall GE's
25 market participation. GE's mounting indemnification liabilities give rise to GE's
26 *legal* interest in clarifying its rights vis-à-vis NeuroGrafix's '360 patent. This legal
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1 interest is, for obvious reasons, adverse to NeuroGrafix, the exclusive licensee of
2 the ‘360 patent.

3 Caraco had a legal obligation to sell FDA-approved products. It owed this
4 obligation to the general public at large – not to the NDA holder. The FDA both
5 administered this obligation (via its approval process) and enforced it. Likewise,
6 GE owes indemnification obligation to its customers – not to NeuroGrafix. These
7 obligations are enforceable by state contract law. Neither Caraco’s FDA-approval
8 obligations to the general public, nor GE’s indemnification obligations to its
9 customers give rise to *any* cause of action in either case that the DJ defendant-
10 patentee could bring against the DJ plaintiff. The Federal Circuit’s jurisdictional
11 finding in *Caraco*, with its inherent finding that the NDA holder and ANDA filer
12 in that case had adverse legal interests, therefore weighs heavily against
13 NeuroGrafix’s cause-of-action theory.

14 The Hatch-Waxman act did not expand the jurisdictional boundaries of the
15 federal courts. In fact, Congress only extended federal jurisdiction in the Hatch-
16 Waxman context “to the extent consistent with the Constitution.” *Id.* at 1285.
17 “Accordingly, federal courts have jurisdiction [in the Hatch-Waxman context] to
18 the extent they present an Article III case or controversy.” *Id.*

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20 //

1 **B. Four Federal Circuit cases contain further guidance supporting the**
2 **finding that a supplier facing indemnification liability stemming from a**
3 **patentee’s actions has adverse legal interests with that patentee**
4 **notwithstanding a covenant not to sue**

5 The guidance of four Federal Circuit cases previously cited by the Court,
6 whether those cases are binding authority or otherwise,² is still persuasive. This
7 guidance provides further support for the Court’s conclusion that GE and
8 NeuroGrafix have adverse legal interests. *See Creative Compounds, LLC v.*
9 *Starmark Labs.*, 651 F.3d 1303, 1316 (Fed. Cir. 2011) (“In the **absence of an**
10 **indemnity agreement** between Starmark and one of these ‘customers,’ Starmark
11 has, at most, only an economic interest in clarifying its customers’ rights under
12 Creative’s patents.”) (emphasis added); *Arris Grp., Inc. v. British*
13 *Telecommunications PLC*, 639 F.3d 1368 (Fed. Cir. 2011) (“Where a patent holder
14 accuses customers of direct infringement based on the sale or use of a supplier’s
15 equipment, **the supplier has standing** to commence a declaratory judgment action
16 if . . . the supplier is obligated to indemnify its customers from infringement
17 liability”) (emphasis added); *ABB Inc. v. Copper Indus., LLC*, 635 F.3d 1345,
18 1349 (Fed. Cir. 2011) (“[The supplier] **had an interest** in determining whether it
19 would incur liability . . . for **indemnification**, which turned on whether [its
20 customer] would be liable for infringement.”) (emphasis added); *Microchip Tech.*

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27 ² Putting its cause-of-action theory aside, NeuroGrafix is partially correct that the Court erred in its previous
28 jurisdictional order when describing a set of Federal Circuit cases as “binding authority” for the issue of declaratory
 judgment jurisdiction. Mot. at 14. Upon review, the Court finds that for some of the cited cases, the relied-upon
 guidance did not constitute the Federal Circuit’s holding.

Exhibit X

LINKS: 35

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:12-cv-04586-MRP-RZ	Date	September 18, 2012
Title	General Electric Company v. NeuroGrafix et al.		

Present: The Honorable	MARIANA R. PFAELZER	
Cynthia Salyer	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
None	None	

Proceedings: (In Chambers)**Order Denying NeuroGrafix's Motion to Certify the Court's August 16, 2012, Order for Interlocutory Appellate Review Pursuant to 28 U.S.C. § 1292(b)**

On August 16, 2012, the Court issued an order finding declaratory judgment jurisdiction in this case. ECF No. 31. On August 30, 2012, NeuroGrafix moved the Court to certify the jurisdictional order for interlocutory appellate review pursuant to 28 U.S.C. § 1292(b). ECF No. 35. NeuroGrafix's certification motion is hereby **DENIED**. The hearing for this motion, previously set for September 27, 2012, at 11:00 a.m., is hereby vacated.

IT IS SO ORDERED.

Exhibit Y

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

Civil Action No.

PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION d/b/a
PHILIPS MEDICAL SYSTEMS NORTH
AMERICA, a Delaware corporation;
INVIVO CORPORATION, a Delaware
corporation; PHILIPS MEDICAL
SYSTEMS NEDERLAND, B.V., a Dutch
Corporation; KONINKLIJKE PHILIPS
ELECTRONICS N.V., a Dutch corporation
and PHILIPS HEALTHCARE
INFORMATICS, INC., a Delaware
corporation,

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. (“NIMA”), and
Image-Based Surgicenter Corporation (“IBSC”) (collectively, “Plaintiffs”) allege as follows:

1. This case is an action for patent infringement of United States Patent No.
5,560,360 (the “360 Patent”) under the Patent Laws of the United States, as set forth in 35
U.S.C. §§271 and 280 through 285.

PARTIES

2. Plaintiff NeuroGrafix is a California corporation with its principal place of
business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.

3. Plaintiff Neurography Institute Medical Associates, Inc. (“NIMA”) is a California corporation with its principal place of business in Santa Monica, California.

4. Plaintiff Image-Based Surgicenter Corporation (“IBSC”) is a California corporation with its principal place of business in Santa Monica, California.

5. On information and belief, defendant Philips Electronics North America Corporation d/b/a Philips Medical Systems North America (“Philips NA”) is a Delaware corporation with its principal place of business located at 3000 Minuteman Road, Andover, Massachusetts 01810.

6. On information and belief, defendant Invivo Corporation (“Invivo”) is a Delaware corporation with its principal place of business at 3545 SW 47th Avenue, Gainesville, Florida 32608, and which operates nationwide, including in this District.

7. On information and belief, defendant Philips Medical Systems Nederland B.V. (“Philips Medical”) is a Dutch corporation with its principal place of business at Building QV-282, P.O. Box 10000, 5680 DA Best, The Netherlands, and which markets and promotes its products in the United States, including in this District.

8. On information and belief, defendant Koninklijke Philips Electronics N.V. (“Royal Philips”) is a Netherlands company with its principal place of business at Breitner Center, Amstelplein 2, 1096 BC Amsterdam, The Netherlands, and which markets and promotes its products in the United States, including in this District.

9. On information and belief, defendant Philips Healthcare Informatics, Inc. (“Philips Healthcare”) is a Delaware corporation with its principal place of business at 3000 Minuteman Road, Andover, Massachusetts 01810. Philips Healthcare has appointed Corporation

Service Company, 84 State Street, Boston, Massachusetts 02109, as its agent for service of process.

10. Philips NA, Invivo, Royal Philips and Philips Healthcare are collectively referred to as “Defendants.”

JURISDICTION AND VENUE

11. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

12. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

13. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled “Image Neurography and Diffusion Anisotropy Imaging.” The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

14. Aaron G. Filler, Jay S. Tsurda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

15. Washington Research Foundation (“WRF”) holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

16. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

17. In 2004, Defendants collaborated with Dr. Filler (and a related DBA, Institute for Nerve Medicine Medical Associates Inc. (“INM”)) on a video advertisement touting Plaintiffs’ technology as the “absolute cutting edge” for the diagnosis and treatment of nerve conditions. The advertisement explained that “INM applies advanced technology found nowhere else in the world to successfully diagnose and treat spinal and nerve problems. The key to INM’s success is their revolutionary use of MRI neurography . . . pioneered by Dr. Aaron Filler.” The advertisement promoted Plaintiffs’ use of Philips equipment to perform methods claimed in the '360 Patent – “with Philips Medical Systems panorama IT Open MR Technology [Dr. Filler] can actually view the anatomy in real time while performing surgical procedures.”

18. That same year, NeuroGrafix shared its business plan with Philips NA. Among other things, NeuroGrafix's business plan discloses the '360 Patent and how NeuroGrafix practices the '360 patent.

19. In addition, Defendants have been aware of the '360 Patent because the '360 Patent was cited during the prosecution of Defendants’ patents, including United States Patent No. 6,642,716 (the “716 Patent”), United States Patent No. 6,724,190 (the “190 Patent”) and United States Patent No. 6,806,705 (the “705 Patent”). In fact, the '360 Patent was a key reference used by the examiners in an Office Action sent in 2003 by the examiners of the applications that became the '705 and '190 Patents. The responses to these Office Actions contain considerable analysis of the '360 Patent.

COUNT I **PATENT INFRINGEMENT**

20. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 19 above, inclusive, as if fully repeated and restated herein.

21. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claims 1, 36, 51 and 54 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services, including without limitation, the performance of and provision of equipment and methods for peripheral nerve MR Neurography, DTI and diffusion anisotropy based tractography. Such products include the Philips Achieva 3.0T, Philips Achieva 1.5T, Philips Intera 1.5T, Philips Intera 3.0T and Philips Eclipse 1.5T and related workstations and software, such as Fibertrak, PRIDE and InVivo software. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

22. Defendants have also been and still are indirectly infringing, by way of inducing infringement by others of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products and services, including without limitation, the performance of and provision of equipment and methods for peripheral nerve MR Neurography, DTI and diffusion anisotropy based tractography that induce others to infringe at least claims 1, 36, 51 and 54 of the '360 Patent. Such products include the Philips Achieva 3.0T, Philips Achieva 1.5T, Philips Intera 1.5T, Philips Intera 3.0T and Philips Eclipse 1.5T and related workstations and software, such as Fibertrak, PRIDE and InVivo software. These products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform MR Neurography, DTI and diffusion anisotropy based tractography. *See, e.g.,*

<http://incenter.medical.philips.com/Default.aspx?tabid=3655> (offering training courses in performing DTI). Since at least 2003, and likely earlier, Defendants have had knowledge of the '360 Patent and, by continuing the actions described above, have had the specific intent to, or should have known that their actions would, induce infringement of the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(b).

23. Defendants have also been and still are indirectly infringing, by way of contributing to the infringement by others of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software for use in systems that thereby fall within the scope of at least claims 1, 36, 51 and 54 of the '360 Patent. Such products include the Philips Achieva 3.0T, Philips Achieva 1.5T, Philips Intera 1.5T, Philips Intera 3.0T and Philips Eclipse 1.5T and related workstations and software, such as Fibertrak, PRIDE and InVivo software. These products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform MR Neurography, DIT and diffusion anisotropy based tractography. *See, e.g.*, <http://incenter.medical.philips.com/Default.aspx?tabid=3655> (offering training courses in performing DTI). Defendants' accused products and software, are a material part of the invention, and are especially made or especially adapted for use in the infringement of '360 Patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least 2003, and likely earlier, Defendants have had knowledge of

the '360 Patent and have had the specific knowledge that the combination of its software and computer systems described above infringe the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(c).

24. As a result of Defendants' continuing use of the claimed invention after receiving notice of the '360 Patent, Defendants are willfully infringing the '360 Patent.

25. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

26. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have infringed, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;

3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;

4. An award to Plaintiffs for enhanced damages, as provided under 35 U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct;

5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and

6. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: June 15, 2012

Respectfully submitted,

PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC., and
IMAGE-BASED SURGICENTER CORPORATION
By their attorneys,

/s/ David S. Godkin
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Anne Marie Longobucco (BBO#649299)
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Exhibit Z

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

BRAINLAB, INC., a Delaware corporation;
BRAINLAB AG, a German corporation;
BRAINLAB MEDIZINISHE
COMPUTERSYSTEME GMBH, a German
corporation,

Defendants.

Civil Action No. 12-cv-6075

Judge
Magistrate Judge

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and
Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

PARTIES

1. Plaintiff NeuroGrafix is a California corporation with its principal place of
business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California 90405.

2. Plaintiff NIMA is a California corporation with its principal place of business in
Santa Monica, California.

3. Plaintiff IBSC is a California corporation with its principal place of business in
Santa Monica, California.

4. On information and belief, Defendant Brainlab, Inc. is a Delaware corporation with its principal place of business located at 3 Westbrook Corporate Center, Suite 400, Westchester, Illinois 60154.

5. On information and belief, Defendant Brainlab AG is a German corporation with its principal place of business at Kapellenstraße 12, 85622 Feldkirchen, Germany that markets and promotes its products in the United States, including in this District.

6. On information and belief, Defendant Brainlab Medizinische Computersysteme GmbH is a German corporation with its principal place of business at Kapellenstraße 12, 85622 Feldkirchen, Germany that markets and promotes its products in the United States, including in this District.

7. Brainlab, Inc., Brainlab AG, and Brainlab Medizinische Computersysteme GmbH are collectively referred to as "Defendants."

JURISDICTION AND VENUE

8. This case is an action for patent infringement of United States Patent No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

9. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

10. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

11. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

12. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

13. Washington Research Foundation ("WRF"), a not-for-profit corporation incorporated and existing under the laws of the State of Washington, holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

14. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

15. Defendants became aware of the '360 Patent at least as early as May 2009. In May 2009, Dr. Filler sent an email to Defendants informing them that they infringe the '360 Patent and offered to discuss licensing of the '360 Patent. Defendants declined to discuss licensing of the '360 Patent. In spite of their awareness of their infringement, Defendants continue to make, use, sell, offer to sell and/or import, without authority, infringing products. *See, e.g.*, <http://www.brainlab.com/art/2827/4/fibertracking-and-functional-software/>; <http://www.brainlab.com/art/2844/4/intra-operative-mri/>.

COUNT I **PATENT INFRINGEMENT**

16. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 15 above, inclusive, as if fully repeated and restated herein.

17. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services, including without limitation, the performance of and provision of equipment and methods for DTI and diffusion anisotropy based tractography. Such products include Defendants' Brainsuite iMRI and related software, such as iPlan Fibertracking software. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

18. Defendants have also been and still are indirectly infringing, by way of inducing infringement by others of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products and services, including without limitation, the performance of and provision of equipment and methods for DTI and diffusion anisotropy based tractography that induce others to infringe at least claim 36 of the '360 Patent. Such products include Defendants' Brainsuite iMRI and related software, such as iPlan Fibertracking and BOLD MRI Mapping software, iPlan RT, iPlan Flow, iPlan Neuroradiology, and courses taught at the Defendants' Academy. These products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform DTI and diffusion anisotropy based tractography. *See, e.g.*, <http://www.brainlab.com/art/2827/4/fibertracking-and-functional-software/>; <http://www.brainlab.com/art/2844/4/intra-operative-mri/>. Since at least May 2009, and likely earlier, Defendants have had knowledge of the '360 Patent and, by continuing the actions

described above, have had the specific intent to, or should have known that their actions would, induce infringement of the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(b).

19. Defendants have also been and still are indirectly infringing, by way of contributing to the infringement by others of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software for use in systems that thereby fall within the scope of at least claim 36 of the '360 Patent. Such products include Defendants' Brainsuite iMRI and related software, such as iPlan Fibertracking and BOLD MRI Mapping software iPlan RT, iPlan Flow, iPlan Neuroradiology, and courses taught at the Defendants' Academy. These products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform DTI and diffusion anisotropy based tractography. *See, e.g.*, <http://www.brainlab.com/art/2827/4/fibertracking-and-functional-software/>; <http://www.brainlab.com/art/2844/4/intra-operative-mri/>. Defendants' accused products and software, are a material part of the invention, and are especially made or especially adapted for use in the infringement of '360 Patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least May 2009, and likely earlier, Defendants have had knowledge of the '360 Patent and have had the specific knowledge that the combination of its software and computer systems described above infringe the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software,

Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(c).

20. As a result of Defendants' continuing use of the claimed invention after receiving notice of the '360 Patent, Defendants are willfully infringing the '360 Patent.

21. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

22. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have infringed, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;

4. An award to Plaintiffs for enhanced damages, as provided under 35 U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
6. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

Date: August 1, 2012

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**Attorneys for Plaintiffs,
NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC.,
AND IMAGE-BASED SURGICENTER
CORPORATION BASED SURGICENTER
CORPORATION**

Exhibit AA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California corporation;
and IMAGE-BASED SURGICENTER
CORPORATION, a California corporation,

Plaintiffs-Counter
Defendants,

v.

PHILIPS ELECTRONICS NORTH AMERICA
CORPORATION d/b/a PHILIPS MEDICAL
SYSTEMS NORTH AMERICA, a Delaware
Corporation; INVIVO CORPORATION, a
Delaware corporation; PHILIPS MEDICAL
SYSTEMS NEDERLAND B.V., a Dutch
corporation; KONINKLIJKE PHILIPS
ELECTRONICS N.V., a Dutch corporation; and
PHILIPS HEALTHCARE INFORMATICS,
INC., a Delaware corporation,

Defendants-Counter
Plaintiffs.

Civil Action No. 1:12-cv-11065-RGS

Jury Trial Demanded

**DEFENDANTS' ANSWER AND COUNTERCLAIMS TO
PLAINTIFFS' COMPLAINT**

Defendants Philips Electronics North America Corporation (“PENAC”), Invivo Corporation (“Invivo”), Philips Medical Systems Nederland B.V. (“Philips Medical”), Koninklijke Philips Electronics N.V. (“KPENV”), and Philips Healthcare Informatics, Inc. (“Philips Healthcare” and together “Philips” or “Defendants”) hereby respond in numbered paragraphs corresponding to numbered paragraphs of the Complaint, and in doing so deny the allegations of the Complaint except as specifically stated:

INFRINGEMENT AND DEMAND FOR JURY TRIAL

1. Philips admits that Plaintiffs’ Complaint alleges infringement of United States Patent No. 5,560,360 (the “360 Patent”) under the patent laws of the United States, as set forth in 35 U.S.C. §§ 271 and 280 through 285, but denies that there are any factual or legal bases for Plaintiffs’ claims. Except as specifically admitted herein, Philips denies any remaining allegations in Paragraph 1.

PARTIES

2. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 and on that basis denies each and every such allegation.

3. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 and on that basis denies each and every such allegation.

4. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 and on that basis denies each and every such allegation.

5. Philips admits that Philips Electronics North America Corporation is a Delaware corporation having its principal place of business at 3000 Minuteman Road, Andover, Massachusetts 01810.

6. Philips admits that Invivo Corporation is a Delaware corporation with its principal place of business at 3545 SW 47th Avenue, Gainesville, Florida 32608. The remaining allegations in Paragraph 6 are unclear and are subject to varying meanings. As such, Philips is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 6 and on that basis Philips denies each and every such allegation.

7. Philips admits that Philips Medical Systems Nederland B.V. is a Dutch corporation with its principal place of business at Building QV-282 P.O. Box 10000, 5680 DA Best, the Netherlands. The remaining allegations in Paragraph 7 are unclear and are subject to varying meanings. As such, Philips is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 7 and on that basis Philips denies each and every such allegation.

8. Philips admits that Koninklijke Philips Electronics N.V. is a Netherlands company with its principal place of business at Breitner Center, Amstelplein 2, 1096 BC Amsterdam, the Netherlands. The remaining allegations in Paragraph 8 are unclear and are subject to varying meanings. As such, Philips is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 8 and on that basis Philips denies each and every such allegation.

9. Philips admits that Philips Healthcare Informatics, Inc. is a Delaware corporation with its principal place of business at 3000 Minuteman Road, Andover, Massachusetts 01810.

Philips admits that Philips Healthcare Informatics, Inc. has appointed Corporation Service Company, 84 State Street, Boston, Massachusetts 02109, as its agent for service of process.

10. There are no allegations in Paragraph 10 to admit or deny.

JURISDICTION AND VENUE

11. Philips admits that this is an action alleging patent infringement and that this Court would have subject matter jurisdiction over a patent infringement action brought by the owner of the '360 Patent. Philips lacks knowledge or information sufficient to form a belief as to whether subject matter jurisdiction extends to NeuroGrafix, Neurography Institute Medical Associates, and Image-Based Surgicenter Corporation (together "NeuroGrafix" or "Plaintiffs") to bring a patent infringement claim under the '360 Patent and therefore denies that this Court has subject matter jurisdiction with respect to an infringement claim brought by Plaintiffs.

12. Philips admits that PENAC and Philips Healthcare have offices within this district. The remaining allegations in Paragraph 12 are unclear and are subject to varying meanings. As such, Philips is without sufficient information to admit or deny the allegations of Paragraph 12, and on that basis Philips denies each and every such allegation.

BACKGROUND

13. Philips admits that the University of Washington is a public institution of higher education in the state of Washington. Philips also admits that Plaintiffs purport to attach a true and correct copy of the '360 Patent issued on October 1, 1999 as Exhibit A. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 13 and on that basis Philips denies each and every such allegation.

14. Philips admits that Aaron G. Filler, Jay S. Tsurda, Todd L. Richards, and Franklyn A. Howe are listed as the alleged inventors of the patent attached as Exhibit A. Philips

is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 14 and on that basis Philips denies each and every such allegation.

15. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and on that basis Philips denies each and every such allegation.

16. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16 and on that basis Philips denies each and every such allegation.

17. Philips admits the existence of a video advertisement. Philips also admits that the advertisement states that “INM applies advanced technology found nowhere else in the world to successfully diagnose and treat spinal and nerve problems. The key to INM’s success is their revolutionary use of MRI neurography . . . pioneered by Dr. Aaron Filler.” Philips denies that the advertisement states that “with Philips Medical Systems panorama IT Open MR Technology [Dr. Filler] can actually view the anatomy in real time while performing surgical procedures.” Philips is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 17 and on that basis Philips denies each and every such allegation.

18. Philips is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18 and on that basis Philips denies each and every such allegation.

19. Philips admits that the ‘360 Patent was cited during the prosecution of Defendants’ patents: United States Patent No. 6,642,716 (the “‘716 Patent”), United States Patent No. 6,724,190 (the “‘190 Patent”) and United States Patent No. 6,806,705 (the “‘705 Patent”). Philips also admits that the ‘360 Patent was referenced by examiners in an Office

Action dated May 28, 2003 that became the '705 Patent. Philips is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 19 and on that basis Philips denies each and every such allegation.

COUNT I: PATENT INFRINGEMENT

20. Philips incorporates herein and realleges its answers to Paragraphs 1-19.
21. Philips denies the allegations in Paragraph 21 of the Complaint.
22. Philips denies the allegations in Paragraph 22 of the Complaint.
23. Philips denies the allegations in Paragraph 23 of the Complaint.
24. Philips denies the allegations in Paragraph 24 of the Complaint.
25. Philips denies the allegations in Paragraph 25 of the Complaint.
26. Philips denies the allegations in Paragraph 26 of the Complaint.

PRAYER FOR RELIEF

With respect to Plaintiffs' Prayer for Relief, Philips denies that Plaintiffs are entitled to any relief whatsoever.

DEFENSES

As additional defenses to the Complaint, Philips alleges (without assuming any burden of proof with respect thereto that is not assigned to it by operation of law) as follows:

**FIRST DEFENSE
(FAILURE TO STATE A CLAIM)**

27. The Complaint fails to state a claim on which relief can be granted.

**SECOND DEFENSE
(NON-INFRINGEMENT)**

28. Philips does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of any claim of the '360 Patent under any theory, including literal infringement or infringement under the doctrine of equivalents.

**THIRD DEFENSE
(INVALIDITY)**

29. The '360 Patent is invalid for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

**FOURTH DEFENSE
(PROSECUTION HISTORY ESTOPPEL)**

30. By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the application that resulted in issuance of the '360 Patent, as shown by the prosecution history thereof, Plaintiffs are estopped from maintaining that any claim of the '360 Patent covers any of Philips' products.

**FIFTH DEFENSE
(WAIVER, LACHES, AND ESTOPPEL)**

31. Plaintiffs' claims are barred by the doctrines of waiver, equitable estoppel, and/or laches.

**SIXTH DEFENSE
(FAILURE TO MARK)**

32. To the extent Plaintiffs have failed to comply with the notice requirements of 35 U.S.C. § 287, Plaintiffs are barred from all monetary relief for acts that occurred prior to Plaintiffs providing actual notice to Philips.

**SEVENTH DEFENSE
(LIMITATION OF DAMAGES)**

33. Pursuant to 35 U.S.C. § 286, Plaintiffs are barred from recovering any damages for acts that occurred more than six years before they filed the Complaint in this action.

**EIGHTH DEFENSE
(UNCLEAN HANDS)**

34. Plaintiffs are not entitled to any relief in this action because they have come to this Court with unclean hands.

**NINTH DEFENSE
(INNOCENT INTENT)**

35. Philips has engaged in all relevant activities in good faith, thereby precluding Plaintiffs, even if they prevail, from recovering their reasonable attorney's fees and/or costs under 35 U.S.C. § 285.

**TENTH DEFENSE
(PROSECUTION LACHES)**

36. The '360 Patent is unenforceable due to prosecution laches in light of Plaintiffs' unreasonable delay in seeking the claims of the '360 Patent and the prejudice suffered by Philips because of this delay.

**ELEVENTH DEFENSE
(IMMEDIATE OR IRREPARABLE INJURY)**

37. Plaintiffs are not entitled to injunctive relief because any alleged injury to Plaintiffs is not immediate or irreparable, and Plaintiffs would have an adequate remedy at law.

**TWELFTH DEFENSE
(STANDING)**

38. Plaintiffs do not have standing to sue for infringement of the '360 Patent.

**THIRTEENTH DEFENSE
(USE OR MANUFACTURE BY OR FOR THE UNITED STATES)**

39. Plaintiffs' claims are barred by 28 U.S.C. § 1498 to the extent they relate to use or manufacture of the inventions of the '360 Patent by or for the United States.

COUNTERCLAIMS

Counter-Plaintiffs Philips Electronics North America Corporation, Invivo Corporation, Philips Medical Systems Nederland B.V., Koninklijke Philips Electronics N.V., and Philips Healthcare Informatics, Inc. allege the following counterclaims against Plaintiffs:

JURISDICTION AND VENUE

40. Philips incorporates herein and realleges its answers to Paragraphs 1-39.

41. Philips asserts counterclaims under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, seeking declaratory judgments under the patent laws of the United States, United States Code Title 35, that the '360 Patent asserted by Plaintiffs is invalid and not infringed.

42. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367(a), 2201, and 2202, and 35 U.S.C. § 1, et seq.

43. Plaintiffs have submitted to the personal jurisdiction of this Court by filing Case No. 1:12-cv-11065-RGS.

44. Venue is proper as to Counter-Defendants in this district, pursuant to 28 U.S.C. § 1391, because this suit was filed in this district by Plaintiffs.

THE PARTIES

45. Defendant Koninklijke Philips Electronics N.V. ("Royal Philips") is a Dutch corporation with its principal place of business in the Netherlands.

46. Defendant Philips Medical Systems Nederland B.V. ("Philips Medical") is a Dutch corporation with its principal place of business in the Netherlands.

47. Defendant Invivo Corporation (“Invivo”) is a Delaware corporation with its principal place of business in Gainesville, Florida.

48. Defendant Philips Electronics North America Corporation (“PENAC”) is a Delaware corporation with its principal place of business in Andover, Massachusetts.

49. Philips Healthcare Informatics, Inc. (“Philips Healthcare”) is a Delaware corporation with its principal place of business in Andover, Massachusetts.

50. Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc., and Image-Based Surgicenter Corporation purport to be California corporations with principal places of business in Santa Monica, California.

**COUNTERCLAIM 1: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘360 PATENT**

51. Philips repeats and realleges Paragraphs 1-50 above as if fully set forth herein.

52. NeuroGrafix alleges in its Complaint that it is the owner of the ‘360 Patent, entitled “Image Neurography and Diffusion Anisotropy Imaging,” which bears an issue date of October 1, 1999.

53. Plaintiffs have sued Philips in the present action, alleging infringement of the ‘360 Patent. Thus, an immediate, real, and justiciable controversy exists between Philips and Plaintiffs with respect to the alleged infringement of the ‘360 Patent.

54. Philips does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of any claim of the ‘360 Patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

55. Philips requests declaratory judgment that Philips does not infringe, directly or indirectly, any claim of the ‘360 Patent.

**COUNTERCLAIM 2: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '360 PATENT**

56. Philips repeats and realleges Paragraphs 1-55 above as if fully set forth herein.

57. An immediate, real, and justiciable controversy exists between Philips and Plaintiffs with respect to the invalidity of the '360 Patent.

58. Each claim of the '360 Patent is invalid for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

PRAYER FOR RELIEF ON PHILIPS' COUNTERCLAIMS

WHEREFORE, Counter-Plaintiffs pray for the following relief:

- A. deny any and all relief requested by Plaintiffs, as set forth in the Complaint and dismiss the complaint with prejudice;
- B. declare that Counter-Plaintiffs do not infringe the '360 Patent;
- C. declare that the '360 Patent is invalid;
- D. declare this case to be exceptional pursuant to 35 U.S.C. § 285 and award Counter-Plaintiffs their reasonable attorney's fees and costs; and
- E. grant Counter-Plaintiffs such other relief as this Court deems just and proper.

JURY DEMAND

Philips requests a jury trial for those issues so triable herein.

Respectfully submitted,

Dated: September 25, 2012

By: /s/ Michael A. Molano
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*Attorneys for Defendants, PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION, a Delaware corporation;
INVIVO CORPORATION, a Delaware
corporation; PHILIPS MEDICAL SYSTEMS
NEDERLAND B.V. a Dutch corporation;
KONINKLIJKE PHILIPS ELECTRONICS
N.V., a Dutch corporation; and PHILIPS
HEALTHCARE INFORMATICS, INC., a
Delaware corporation.*

CERTIFICATE OF SERVICE

I, Michael A. Molano, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those indicated as non-registered participants on the date of filing.

Date: September 25, 2012

/s/ Michael A. Molano
Michael A. Molano

Exhibit BB

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

Civil Action No. 12-cv-6068

THE UNIVERSITY OF CHICAGO
MEDICAL CENTER, an Illinois
corporation; THE UNIVERSITY OF
CHICAGO, an Illinois corporation,

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

PARTIES

1. Plaintiff NeuroGrafix is a California corporation with its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California 90405.

2. Plaintiff NIMA is a California corporation with its principal place of business in Santa Monica, California.

3. Plaintiff IBSC is a California corporation with its principal place of business in Santa Monica, California.

4. On information and belief, Defendant The University of Chicago Medical Center is an Illinois corporation with its principal place of business located at 5841 S. Maryland Avenue, Chicago, Illinois 60637.

5. On information and belief, Defendant The University of Chicago is an Illinois corporation with its principal place of business located at 5801 S. Ellis Avenue, Chicago, Illinois 60637.

6. The University of Chicago Medical Center and The University of Chicago are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services, described below, at the medical facilities affiliated with and/or operated by The University of Chicago.

JURISDICTION AND VENUE

7. This case is an action for patent infringement of United States Patent No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

8. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

10. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and

Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

11. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

12. Washington Research Foundation ("WRF"), a not-for-profit corporation incorporated and existing under the laws of the State of Washington, holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

13. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

COUNT I
PATENT INFRINGEMENT

14. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 13 above, inclusive, as if fully repeated and restated herein.

15. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of DTI and diffusion anisotropy based tractography. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

16. To the extent that facts learned in discovery show that Defendants' infringement of the '360 Patent is or has been willful, Plaintiffs reserve the right to request such a finding at the time of trial.

17. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

18. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have directly infringed the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
5. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

Dated: August 1, 2012

s/ Kirsten L. Thomson
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**Attorneys for Plaintiffs,
NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC.,
AND IMAGE-BASED SURGICENTER
CORPORATION**

Exhibit CC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,
2716 Ocean Park Boulevard
Suite 3075
Santa Monica, CA 90405-5207

Plaintiffs,

vs.

THE JOHNS HOPKINS UNIVERSITY, a
Maryland corporation;
Charles & 34th Street
Baltimore, MD 21218

Serve On: Stephen S. Dunham
Resident Agent
3400 N. Charles St.
113 Garland Hall
Baltimore, MD 21218

and

THE JOHNS HOPKINS HOSPITAL, a
Maryland corporation,
600 North Wolfe Street
Baltimore, MD 21205

Serve On: JoAnne Pollak, Esq.
Resident Agent
Administration 414
600 N. Wolfe St.
Baltimore, MD 21205

Defendants.

Civil Action No.:

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and
Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

1. This case is an action for patent infringement of United States Patent No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

PARTIES

2. Plaintiff NeuroGrafix is a California corporation with its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.

3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is a California corporation with its principal place of business in Santa Monica, California.

4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a California corporation with its principal place of business in Santa Monica, California.

5. On information and belief, defendant The Johns Hopkins University is a Maryland corporation with its principal place of business located at Charles & 34th Street, Baltimore, MD 21218.

6. On information and belief, defendant The Johns Hopkins Hospital is a Maryland corporation with its principal place of business located at 600 North Wolfe Street, Baltimore, MD 21205.

7. The John Hopkins University and The Johns Hopkins Hospital are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services described below.

JURISDICTION AND VENUE

8. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

10. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

11. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

12. Washington Research Foundation ("WRF"), a not-for-profit corporation incorporated and existing under the laws of the State of Washington, holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

13. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

14. Defendants have known about the '360 Patent since, on information and belief, at least 2001. In 2003, Defendants were granted U.S. Patent No. 6,526,305 (the "'305 Patent"), entitled "Method of Fiber Reconstruction Employing Data Acquired By Magnetic Resonance Imaging." During the prosecution of the '305 Patent, according to the face of the patent, the examiner cited the '360 Patent as prior art. The only office action mailed by the examiner during the prosecution of the '305 Patent was mailed on September 25, 2001.

15. On information and belief, Defendants were aware of the '360 Patent well before 2001. In or around 1996, a faculty member of Defendants contacted Dr. Filler to express interest in Magnetic Resonance Neurography. During the following years, including after the formation of NeuroGrafix and NIMA, additional contacts took place in which faculty members of Defendants expressed interest in providing high quality neurography services for its patients.

16. Additionally, in December of 2009, NeuroGrafix wrote to Defendants' to inform them of their infringement of the '360 Patent and to inquire as to whether Defendants were interested in negotiating a license. NeuroGrafix received a letter from counsel for Defendants indicating that they would investigate and respond, but no further correspondence was received.

17. Defendants were therefore aware of the '360 Patent since at least as early as 2001 and likely were aware of the '360 Patent well before that.

COUNT I
PATENT INFRINGEMENT

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above, inclusive, as if fully repeated and restated herein.

19. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claims 1 and 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of MR Neurography, DTI and diffusion anisotropy based tractography using non-Siemens equipment and software, and Defendants' manufacture, use, sale, offer for sale or importation of Defendants' DTI Studio and MRI Studio software products. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

20. Defendants have also been and still are indirectly infringing, by way of inducing infringement by others of the '360 Patent, by, among other things, providing courses and seminars inducing others to infringe at least claims 1 and 36 of the '360 Patent by performing, without license or authority, MR Neurography, DTI and diffusion anisotropy based tractography using non-Siemens equipment and software. *See* Exhibit B (DTI Studio email); Exhibit C (Neurography seminar). Additionally, Defendants have also been and still are indirectly infringing, by way of inducing infringement by others of the '360 Patent, by, among other things, manufacturing, using, selling, offering for sale or importing Defendants' DTI Studio and MRI Studio software products that induce others to infringe at least claims 1 and 36 of the '360 Patent. *See, e.g.,* <https://www.mristudio.org/>, http://www.hopkinsmedicine.org/psychiatry/research/neuroimaging/research_methods/diffusion_tensor.html, http://www.hopkinsortho.org/musculoskeletal_mri.html. Defendants' courses, seminars and products induce direct infringement of at least claims 1 and 36 of the '360 Patent by, for example, hospitals, radiologists, technologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform MR Neurography, DTI and diffusion anisotropy based tractography. Since at least 2001, and likely earlier, Defendants have had knowledge of the '360 Patent and, by continuing the actions described above, have had the specific intent to, or should have known that their actions would, induce infringement of the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(b).

21. Defendants have also been and still are indirectly infringing, by way of contributing to the infringement by others of the '360 Patent, by, among other things, making,

using, importing, offering for sale, and/or selling, without license or authority, products and services, including without limitation, Defendants' manufacture, use, sale, offer for sale or importation of Defendants' DTI Studio and MRI Studio software products. These products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform MR Neurography, DTI and diffusion anisotropy based tractography. *See, e.g.*, <https://www.mristudio.org/>, http://www.hopkinsmedicine.org/psychiatry/research/neuroimaging/research_methods/diffusion_tensor.html, http://www.hopkinsortho.org/musculoskeletal_mri.html. Defendants' accused products and software, are a material part of the invention, and are especially made or especially adapted for use in the infringement of '360 Patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least 2001, and likely earlier, Defendants have had knowledge of the '360 Patent and have had the specific knowledge that the combination of its software and computer systems described above infringe the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(c).

22. As a result of Defendants' continuing use of the claimed invention after receiving notice of the '360 Patent, Defendants are willfully infringing the '360 Patent.

23. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

24. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have infringed, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. An award to Plaintiffs for enhanced damages, as provided under 35 U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
6. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 23, 2012

/s/

Matthew G. Hjortsberg (#024949)

hjortsberg@bowie-jenson.com

Joshua A. Glikin (#26852)

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Towson, Maryland 21204

Phone: (410) 583-2400

Facsimile: (410) 583-2437

Counsel for Plaintiff

Exhibit DD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

Civil Action No.

TRUSTEES OF TUFTS COLLEGE, a
Massachusetts corporation; TUFTS
MEDICAL CENTER aka TUFTS
SHARED SERVICES, INC, a
Massachusetts corporation; and TUFTS
MEDICAL CENTER PHYSICIANS
ORGANIZATION, a Massachusetts
corporation

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and
Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

1. This case is an action for patent infringement of United States Patent No.
5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35
U.S.C. §§271 and 280 through 285.

PARTIES

2. Plaintiff NeuroGrafix is a California corporation with its principal place of
business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.

3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is a California
corporation with its principal place of business in Santa Monica, California.

4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a California corporation with its principal place of business in Santa Monica, California.

5. On information and belief, defendant Trustees of Tufts College is a Massachusetts corporation with its principal place of business located at Tufts College, Medford, MA 02155.

6. On information and belief, defendant Tufts Medical Center, Inc aka Tufts Shared Services, Inc. is a Massachusetts corporation with its principal place of business located at 800 Washington Street, Boston, MA 02111.

7. On information and belief, defendant Tufts Medical Center Physicians Organization, Inc. is a Massachusetts corporation with its principal place of business located at 800 Washington St., Box 1013, Boston, MA 02111.

8. Trustees of Tufts College, Tufts Medical Center Physicians Organization, Tufts Shared Services, Inc and Tufts Medical Center are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services, described below, at the medical facilities affiliated with and/or operated by them.

JURISDICTION AND VENUE

9. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

10. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

11. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and

Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

12. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

13. Washington Research Foundation ("WRF") holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

14. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

COUNT I
PATENT INFRINGEMENT

15. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 14 above, inclusive, as if fully repeated and restated herein.

16. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of diffusion tensor imaging and diffusion anisotropy based tractography. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

17. To the extent that facts learned in discovery show that Defendants' infringement of the '360 Patent is or has been willful, Plaintiffs reserve the right to request such a finding at the time of trial.

18. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

19. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have directly infringed the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
5. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 11, 2012

Respectfully submitted,

PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC., and
IMAGE-BASED SURGICENTER CORPORATION
By their attorneys,

/s/ David S. Godkin
David S. Godkin (BBO#196530)
Anne Marie Longobucco (BBO#649299)
Birnbaum & Godkin, LLP
280 Summer Street
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617-307-6100
godkin@birnbaumgodkin.com
longobucco@birnbaumgodkin.com

Exhibit EE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

Civil Action No.

BETH ISRAEL DEACONESS MEDICAL
CENTER, INC., a Massachusetts
corporation; HARVARD MEDICAL
FACULTY PHYSICIANS AT BETH
ISRAEL DEACONESS MEDICAL
CENTER, INC., a Massachusetts
corporation; BETH ISRAEL DEACONESS
PHYSICIANS ORGANIZATION, INC., a
Massachusetts corporation; CAREGROUP,
INC., a Massachusetts corporation; BETH
ISRAEL DEACONESS MEDICAL
CENTER AND CHILDREN'S HOSPITAL
MEDICAL CARE CORPORATION, a
Massachusetts corporation; and
PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, a Massachusetts
corporation,

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and
Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

1. This case is an action for patent infringement of United States Patent No.
5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35
U.S.C. §§271 and 280 through 285.

PARTIES

2. Plaintiff NeuroGrafix is a California corporation with its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.

3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is a California corporation with its principal place of business in Santa Monica, California.

4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a California corporation with its principal place of business in Santa Monica, California.

5. On information and belief, defendant Beth Israel Deaconess Medical Center, Inc. is a Massachusetts corporation with its principal place of business located at 330 Brookline Avenue, Boston, MA 02105.

6. On information and belief, defendant Harvard Medical Faculty Physicians at Beth Israel Deaconess Medical Center, Inc. is a Massachusetts corporation with its principal place of business located at 375 Longwood Ave., 3rd Floor, Boston, MA 02215 which employs physicians who engage in actions that infringe the '360 Patent.

7. On information and belief, defendant Beth Israel Deaconess Physicians Organization, LLC is a Massachusetts limited liability company with its principal place of business located at 400 Blue Hill Drive, Suite 2B, Westwood, MA 02090 which employs physicians who engage in actions that infringe the '360 Patent.

8. On information and belief, defendant Caregroup, Inc. is a Massachusetts corporation with its principal place of business located at 109 Brookline Ave., Suite 300, Boston, MA 02215 which owns or directs activities at hospitals with MRI equipment including Beth Israel Deaconess Medical Center, Beth Israel Deaconess Hospital-Needham, Beth Israel

Deaconess Hospital-Milton, Mount Auburn Hospital and New England Baptist Hospital that infringe the '360 Patent.

9. On information and belief, defendant Beth Israel Deaconess Medical Center and Children's Hospital Medical Care Corporation is a Massachusetts corporation with its principal place of business located at 482 Bedford Street, Lexington, MA 02173.

10. On information and belief, defendant President and Fellows of Harvard College is a Massachusetts corporation with its principal place of business located at Massachusetts Hall, Cambridge, MA 02138. This corporation receives grants owns equipment and/or employs physicians and scientists who carry out data analysis and who operate MRI equipment in ways which infringe the '360 Patent. at Beth Israel Deaconess/Children's Hospital and other CareGroup, Inc hospitals.

11. Beth Israel Deaconess Medical Center, Inc, Harvard Medical Faculty Physicians at Beth Israel Deaconess Medical Center, Inc., Beth Israel Deaconess Physicians Organization, LLC, Caregroup, Inc., Beth Israel Deaconess Medical Center and Children's Hospital Medical Care Corporation and President and Fellows of Harvard College are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services, described below, at Beth Israel Deaconess Medical Center and other related or affiliated facilities.

JURISDICTION AND VENUE

12. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

13. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

14. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

15. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

16. Washington Research Foundation ("WRF") holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

17. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

COUNT I **PATENT INFRINGEMENT**

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above, inclusive, as if fully repeated and restated herein.

19. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of diffusion tensor imaging and diffusion anisotropy based tractography. Thus, by making, using, importing, offering for sale, and/or selling such products

and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

20. To the extent that facts learned in discovery show that Defendants' infringement of the '360 Patent is or has been willful, Plaintiffs reserve the right to request such a finding at the time of trial.

21. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

22. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have directly infringed the '360 Patent;

2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;

3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
5. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 11, 2012

Respectfully submitted,

PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC., and
IMAGE-BASED SURGICENTER CORPORATION
By their attorneys,

/s/ David S. Godkin
David S. Godkin (BBO#196530)
Anne Marie Longobucco (BBO#649299)
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Exhibit FF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEUROGRAFIX, a California corporation;
NEUROGRAPHY INSTITUTE MEDICAL
ASSOCIATES, INC., a California
corporation; and IMAGE-BASED
SURGICENTER CORPORATION, a
California corporation,

Plaintiffs,

vs.

Civil Action No.

THE BRIGHAM AND WOMEN'S
HOSPITAL INC., a Massachusetts
Corporation; BRIGHAM AND WOMEN'S
PHYSICIANS ORGANIZATION, INC., a
Massachusetts corporation; PARTNERS
HEALTHCARE SYSTEM, INC., a
Massachusetts corporation; and
PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, a Massachusetts
corporation,

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and
Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

1. This case is an action for patent infringement of United States Patent No.
5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35
U.S.C. §§271 and 280 through 285.

PARTIES

2. Plaintiff NeuroGrafix is a California corporation with its principal place of
business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.

3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is a California corporation with its principal place of business in Santa Monica, California.

4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a California corporation with its principal place of business in Santa Monica, California.

5. On information and belief, defendant The Brigham and Women's Hospital Inc. is a Massachusetts corporation with its principal place of business located at 75 Francis St., Boston, Massachusetts where it owns and operates hospitals including MRI equipment. Among the equipment and software owned, there is included equipment and software whose only purpose is to carry out diffusion anisotropy MRI scanning and/or to analyze diffusion anisotropy data for the purpose of preparing tractographic images.

6. On information and belief, defendant Brigham And Women's Physicians Organization, Inc. is a Massachusetts corporation with its principal place of business located at 75 Francis St., Boston, MA 02115 where it provides physician services to the Brigham and Woman's Hospital including radiological services such as prescribing and interpreting MRI scans as well as performing analysis on data from diffusion anisotropy MRI scanning and processing such data and generating tractographic representations of neural tracts among other tasks that infringe upon the '360 Patent.

7. On information and belief, defendant Partners Healthcare System, Inc. (formerly known as MGH/Brigham Health Care System, Inc.) is a Massachusetts corporation with its principal place of business located at 800 Boylston St., Suite 1150, Boston, MA 02199. It owns, or directs activities at, and/or operates several hospitals including Brigham and Woman's Hospital, Inc; Massachusetts General Hospital, Faulkner Hospital, Martha's Vineyard Hospital, McLean Hospital, Newton Wellesley Hospital, North Shore Medical Center where equipment is

owned whose sole purpose is for the collection and analysis MRI data which infringes upon the '360 Patent. In addition, it owns Partners Community Healthcare Inc, a management services organization for the Partner's Hospitals, which on information and belief employs technologists or arranges for contracting for services and sells such services and products that infringe upon the '360 Patent.

8. On information and belief, defendant President and Fellows of Harvard College is a Massachusetts corporation with its principal place of business located at Massachusetts Hall, Cambridge, MA 02138. This corporation receives, grants or owns equipment and/or employs physicians and scientists who carry out data analysis and who operate MRI equipment in ways which infringe the '360 Patent.

9. The Brigham and Women's Hospital Inc., Brigham And Women's Physicians Organization, Inc., Partners Healthcare System, Inc., and President and Fellows of Harvard College are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services, described below, at Brigham and Woman's Hospital and other related or affiliated facilities.

JURISDICTION AND VENUE

10. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

11. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

BACKGROUND

12. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

13. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

14. Washington Research Foundation ("WRF") holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

15. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

16. Defendants became aware of the '360 Patent at least as early as December 18, 2009. On December 18, 2009, Dr. Filler sent an email to Dr. Gary L. Gottlieb and Dr. Elizabeth G. Nabel, as the current and future presidents of The Brigham and Women's Hospital that Defendants infringed the '360 Patent and offering to discuss licensing the '360 Patent.

COUNT I **PATENT INFRINGEMENT**

17. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 above, inclusive, as if fully repeated and restated herein.

18. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of diffusion tensor imaging ("DTI") and diffusion anisotropy based

tractography and making, using, selling and offering for sale of Slicer and 3D Slicer. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

19. Defendants have also been and still are indirectly infringing, by way of inducing infringement by others of at least claim 36 of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products and services that include, without limitation, the performance of DTI and diffusion anisotropy based tractography and making, using, selling and offering for sale of Slicer and 3D Slicer. Defendants' Slicer and 3D Slicer products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform DTI and diffusion anisotropy based tractography. *See, e.g.*, <http://www.slicer.org>, <http://www.slicer.org/slicerWiki/index.php/Documentation/4.0/Modules/TractographyDisplay>, <http://www.slicer.org/slicerWiki/index.php/Documentation/4.0/Modules/TractographyLabelMapSeeding>. Since at least December 2009, and likely earlier, Defendants have had knowledge of the '360 Patent and, by continuing the actions described above, have had the specific intent to, or should have known that their actions would, induce infringement of the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(b).

20. Defendants have also been and still are indirectly infringing, by way of contributing to the infringement by others of claim 36 of the '360 Patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products and services that include, without limitation, the performance of DTI and diffusion anisotropy based tractography and making, using, selling and offering for sale of Slicer and 3D Slicer. Defendants' Slicer and 3D Slicer products are used in infringing products and services made, used, imported, offered for sale, and/or sold by direct infringers of the '360 Patent in the United States, such as hospitals, radiologists and others. Defendants induce their customers to directly infringe by inducing or encouraging the use of their products and software to perform DTI and diffusion anisotropy based tractography. *See, e.g.*, <http://www.slicer.org>, <http://www.slicer.org/slicerWiki/index.php/Documentation/4.0/Modules/TractographyDisplay>, <http://www.slicer.org/slicerWiki/index.php/Documentation/4.0/Modules/TractographyLabelMapSeeding>. Defendants' accused products and software, are a material part of the invention, and are especially made or especially adapted for use in the infringement of '360 Patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least December 2009, and likely earlier, Defendants have had knowledge of the '360 Patent and have had the specific knowledge that the combination of its software and computer systems described above infringe the '360 Patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(c).

21. As a result of Defendants' continuing use of the claimed invention after receiving notice of the '360 Patent, Defendants are willfully infringing the '360 Patent.

22. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

23. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have infringed, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. An award to Plaintiffs for enhanced damages, as provided under 35 U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and

6. Any and all other relief to which Plaintiffs may show themselves to be entitled.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 11, 2012

Respectfully submitted,

PLAINTIFFS NEUROGRAFIX, NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES, INC., and
IMAGE-BASED SURGICENTER CORPORATION
By their attorneys,

/s/ David S. Godkin

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